Supreme Court, U.S.
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No. _____
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

EDITH HOROWITZ BROIDA, PETITIONER

V.

ESTATE OF MAURICE HOROWITZ, DECEASED, Through Its Personal Representative Samuel S. Smith, et al.,

Respondents

On Petition for Writ of Certiorari to the United States Eleventh Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a federal court can prejudicially deny access to federal diversity jurisdiction to a United States citizen by denying to her 14th and 5th Constitutional Amendment guarantees together with Article IV,Sec. 2, and Article III, Sec. 1 and 2 guarantees of the liberty and freedom to choose the location of a permanent residence and declare that residence which meets all legal requisites as her permanent domicile whenever she so chooses to designate it, and to proceed with her suit in federal court for her day in court against tortfeasing defendants and lawyer defendants who have caused without trial her property appropriated to them by conspiracy with state judges thereby denying her as well protection of her property becoming a violation of Due Process, with the preferential treatment of defendant lawyers continuing in federal courts, prohibiting her access to federal court to sue for return of her property leaving said property in the hands of malfeasors which is a governmental forfeiture of her property, and a deprivation of her civil rights.

2. Whether the district and appeal courts can deny plaintiff/appellant's constitutional right to bring her case to federal court where there is undeniable diversity jurisdiction and appellant's case first brought in state court was dismissed by a judge at a third hearing on defendants' motion to dismiss after appearance at the first two hearings by Plaintiff with her court reporters, and written notification to the judge and all defendants that she was hospitalized and could not attend, said judge having a relationship with one defendant lawyer of appointing him into cases; the dismissal a due process civil rights abuse.

3. Whether a panel of federal appeal judges can decide an appeal without having read appellant's briefs, such failure evident where issues raised in the briefs regarding procedural due process violations by the district court are not ruled on:
   a) that the district judge refused to hear the substantive jurisdictional facts of domicile even upon motion, ordering a magistrate to hear the issue, which magistrate was at the time applying for a federal judgeship; and said district judge refusing to review the facts de novo as required by federal rules after appellant's objection to the magistrate's Report, in violation of the federal civil rules of procedure;
   b) that the appeal panel issued their ruling upholding the district court without any citation of law where the evidence of domicile of appellant is clear, and where the cited case of district court in fact upholds appellant; and
   c) that the appeal panel refused to recognize diversity of citizenship between plaintiff/appellant who is residing in Washington, D. C. since 1963 permanently, domiciled there since 1987, whereas defendats are residents of Southern Florida, except Stephen Horowitz, domiciled in California, employed at the Howard Hughes Corp as a mathematician continuously since 1970.

4.. Whether a panel of federal appeal judges can fail to rule on appellant's motion to accept her Reply Brief until the final ruling which affirms the district court where such briefs have been incorrectly returned to appellant by the clerk and not available to the court until the Petition for Re--hearing when the briefs are returned with motion to accept;

and refuse oral argument to Appellant although they had only two months before held argument hearings in Miami, Florida where defendant attorneys live, such denial in the final ruling; and refuse to strike the brief filed by a defendant having no standing to file pleadings as a matter of state law in such a case; and that they did not rule on the same issue in district court where the magistrate permitted defendants who had no standing to file motions to dismiss and to argue their motions, and in fact enter a Report as based on a motion by a defendant with no standing to file pleadings.

5. Whether having undeniable diversity jurisdiction appellant can be denied her right to sue to recover money owed her by decedent's estate such right to suit in federal court provided by federal law, and such suit provided by state probate law, where all defendants and defendant lawyers, have conspired with state probate judges to ignore valid binding settlement agreements between heirs and deprive plaintiff/appellant, the eldest child of 2, and sole daughter, age 59 at death of decedent of her one-half inheritance by valid wills, by heirship agreement, by state law of intestacy , and by her professional work as attorney for decedent for 5 years before his death protecting his residence against eminent domain taking through litigation and winning, and continuing for the estate increasing the value of the property and settling for four times the offer, representing the estate in litigation against invalid wills removing five invalid claimants, representing the estate for five years as personal representative and in all actions and excessive work increasing

increasing the value of the estate, at great stress and detriment to her well-being and health, and loss of other gainful employment, and whereas the entry of the defendant attorneys into the probate case lost hundreds of thousands of dollars to the estate and the rightful heirs.

LIST OF PARTIES

EDITH HOROWITZ BROIDA, Petitioner/Appellant/ Plaintiff is the eldest of two adult children of decedent Maurice Horowitz and of his sole wife, married sixty years, and predeceased him by six months. Petitioner has sued his Estate on claims against decedent for monies owed her by him, owed his spouse, and owed her Estate of which Petitioner is personal representative and one-half heir, and which Estate loaned money to the defendant Estate which has not been repaid, without grounds for such denial of payment, and for services rendered to the Estate by her and for investment and payments made by her personally for the benefit of the Estate which repayment by the Estate has been refused to her.

DEFENDANT:
ESTATE OF MAURICE HOROWITZ IS THE DEFENDANT. By Florida law a decedent's Estate must sue and be sued through its personal representative. Samuel S. Smith is the court-appointed personal representative (executor) unknown to the decedents and to the family members and invalidly appointed by the judge.

Parties Joined in the Suit
All those heirs receiving distribution,(and said distribution is invalid),and all attorneys receiving fees,(all of which are invalidly paid since they rendered no service for which fees can be paid in Florida probates by law) are joined for the court to have jurisdiction over them and the Estate assets of money which is in their possession.

Samuel S. Smith, attorney-at-law, joined as personal representative and attorney representing himself as personal representative who received more than $100,000 in fees.

Milton Kelner, attorney-at-law, appointed as guardian-ad-litem for minor Thomas Blaine Merrett, and never contributed any benefit

LIST OF PARTIES (cont'd)

to the minor or the Estate, received fees of $10,000. (not served with complaint)

Gene S. Rosen, attorney-at-law, retained by Stacie Broida Merrett for herself and Thomas Blaine Merrett to obtain her settlement but instead conspired to cause litigation and other heirs to breach their binding settlement agreement, contributing no increase of value to the estate but a decrease,resulting in civil rights deprivation of property and contractual rights to Petitioner Broida. Awarded fees of $25,000 by the probate judge and obtained more fees from client Merrett. It is unknown whether he was paid by the heirs whom he did not represent but directed to breach their contract.

Bernard B. Weksler, attorney-at-law, who entered the probate about 1984 directing Alvin Edward Horowitz and his four issue to breach their valid binding settlement agreement of 1978 to deliberately cheat Petitioner Broida whom he believed caused her parents to fire him after he assisted a debtor of theirs to defraud them. He is joined as reprsenting these heirs who received invalid distribution, as notice to them. (served for his clients.)

Alvin Edward Horowitz, 2-year younger brother of Petitioner, who joined with her in litigating against the invalid wills, in continuing the eminent domain suit for the Estate and invested his money from the Estate of the mother for these purposes and acted as co-personal representative of both Estates with Petitioner doing the actual work. Breached his contract with Petitioner 1984 together with his issue.

LIST OF PARTIES (cont'd)

hiring Bernard Weksler to represent them. About a month later Alvin sold one of his many real properties for $431,000 for himself alone, more than was in this, his Father's Estate. His investment had been $60,000 for that property. Took distribution.

Stephen R. Horowitz, eldest issue of Alvin, legal resident of California more than 20 years, 52 years old, assigned his interest to sister Paula but took distribution, fraudulently through Weksler and Smith. Employed as mathematician for 20 years by Howard Hughes Corp., married 20 years, no children. Distribution over $42,000.

Paula Horowitz Roth, second issue of Alvin, married more than 20 years, no children, 49 years old. Operates a bookkeeping company; husband an electronics expert, own home 20 years; distribution over $42,000.

Karen Horowitz Barnett Kaplan, third issue of Alvin, 48 years of age, married a second time, no children. Retained Melvin Trute conspiring with Gene Rosen to breach her contract, when married to first husband Barnett. Received distribution over $42,000 and purchased home for herself and second husband.

Betsy Horowitz Nieves Horowitz, 36 years old recently divorced, no children, last issue of Alvin. Received distribution of over $42,000, divorced her husband and bought a house for herself. Has been employed at various jobs after college.

Stacie Broida Merrett, only child of Petitioner Broida, 52 years old , mother of Thomas Blaine Merrett, divorced from his father since child was 4 years old, Represented by Gene S. Rosen who then solicited all the named family members to represent them to breach their contracts with Petitioner. Received distribution of more than $42,000 but had to pay Rosen more that he asked for. Her husband is low-economic.

Thomas Blaine Merrett, son of Stacie, only grandchild of Petitioner Broida, was a minor in 1978, now 24 years old. Awarded distribution of over $42,000. A capable youth with strong academic ability, deprived by his mother of association with his grandmother,Petitioner, who wanted to send him to private live-in school and summer camp because of his outstanding athletic ability. Rosen took more moeny from him without any review by the court or by Smith who owed his $100,000 to Rosen.

Saul Broida, named by the probate Judge as trustee for the minor child as was requested by Stacie who was solely reared and supported by her mother, Petitioner. Purportedly he has charge of the minor's share until he reaches age 25. No provision was made by personal representative Smith for reporting to the court on the management of the funds or anything else. Petitioner divorced Saul in 1949 and he took no responsiity for his daughter Stacie . He is added because those assets are in his possession.

LIST OF PARTIES

The parties are all listed in the style of the case.

Other interested parties might be the appeal panel of the Eleventh Circuit Court, Anderson, Edmondson, and Carnes.

District Judge Milton Atkins, Southern District
Magistrate Ted Bandstra, Southern District

Petitioner Edith Horowitz Broida is referred to throughout either as Appellant, Plaintiff or Petitioner, or those combined.

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IN THE SUPREME COURT OF THE UNITED STATES

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EDITH HOROWITZ BROIDA

Petitioner

v.

ESTATE OF MAURICE HOROWITZ, DECEASED, THROUGH Its Personal Representative Samuel S. Smith, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES ELEVENTH CIRCUIT COURT OF APPEALS

EDITH HOROWITZ BROIDA, APPELLANT below, respectfully petitions for a writ of certiorari to review the ruling of the Eleventh Circuit Court of appeals which confirms the dismissal of her action for claims against the Maurice Horowitz estate which denied her diversity jurisdiction for suit in federal district court.

OPINIONS BELOW

Petitioner Broida has not found the district court decision in the Reporter, and it is too soon for the Eleventh Court decision to be reported. Petition for Rehearing was denied in this case, #93-5023 on August 10, 1995. The suit in district court was 92- 00997 Civ-ATkins.

JURISDICTION

The Eleventh Circuit Court of Appeals having entered its decision August 10, 1995 denying Appellant Broida's petition for rehearing confirmation of dismissal by the Miami, Fla. district court the jurisdiction of this Court invoked under 28 U.S.C. 1254 (a),and perhaps (c)

CONSTITUTIONAL PROVISIONS INVOLVED

The 14th Amendment to the U.S. Constitution provides that:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside", and, " No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States"," Nor shall any State deprive any person of life, liberty or property without due process of law", " nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the Constitution provides " no persons shall be deprived of life, liberty or property without due process of law,", and

Article IV, Section 2 of the U. S. Constitution " The citizens of each State shall be entitled to all Privileges and Immunities of citizens in the several states",and

Article III, Section 1, " the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish; and Section 2, The judicial power shall extend to all cases in law and equity, arising under this Constitution, the Laws of the United States, ...to controversies affecting Citizens of different states"

" A State cannot tie up a citizen of another state having property within its territory, invaded by unauthorized acts of its own officers, to suits for redress in its own courts." (1908 U. S. Supreme Court, cited in The Constitution of the United States, by Thomas James Norton, 1943, Prentis v. Atlantic, etc., 211 US 210,1908.

STATEMENT OF THE CASE

In this case this court is confronted with an issue that affects the constitutional right of every citizen and even non-citizen of this Nation which is the inalienable right to move freely throughout this country from State to State to establish a desired residence for whatever reason that person holds without the interference and supervision of government, or the courts or those wishing to stop litigation that may involve them as opposing parties.

If there is anything that is sacred to this Nation it is the freedom of movement of a free people. Unlike countries of other continents, as for example, Europe, and the Middle East, once a person is admitted to this country, or born in this country (and surely those native-born) they may choose any location within the Nation without displaying a passport for entry and without any question being asked as to their reason. And whereas in times gone by, people basically spent their entire lives in one community, after World War II, and particularly since the 60's as small farms have decreased and government and industry have proliferated, this Nations's people have been on the move and have even established residences in more than one location.

Appellant/Plaintiff established a permanent residence in Washington, D. C. in January 1963, and, in fact, had no other physical residence

anywhere else. She maintained a fictional domicile in the home of her parents in the city of Miami Beach, Fla. to which city her parents had moved the family in 1934 when she was 16. Although she had lived away from her parents many times,she maintained their address as her domicile. In fact, at ages 17 and 18 she was in college in another city. After her marriage, she continued to live with her parents, although leaving to follow her husband to training camps in several different states during World War II. After her divorce she lived with her daughter in apartments from time to time, and took her daughter to live in New York City to remain permanently, but had to return, and to Los Angeles, California in 1951, to live permanently, but had to return. She rented apartments from time to time in Dade County but in 1962 her daughter married, and in 1963 Appellant/Plaintiff moved all her belongings to the District of Columbia moving permanently from Miami Beach,

Appellant Broida's parents were in business and living in that same city since 1934 although the father had come to this country in 1914, and the mother had been born in New York City where both lived and moved to the Bronx, N. Y. then to Brooklyn, N. Y., then to Newark, N. J. and finally remained in Miami Beach till their demises, she in 1977, and he in 1978.

Appellant was a devoted daughter for a lifetime, working in the family business since age 16 as bookkeeper, and continuing whenever needed. She managed the business in summers when her parents took vacations and at other times being able to do all that was necessary. She lived in the residence of the parents and managed that as well helping with contracting repairs, etc. In 1954 Appellant, divorcing her husband, her child then 6 she entered law school at night, at her own expense, and graduated cum laude in 1954, having had to work in the day to support herself and child.

As long as her parents would be alive appellant would be on call to answer to their needs. Every member of the family knows that, as well as many other friends and acquaintance. Therefore, Appellant maintained her legal domicile at the home of her parents in Miami Beach while living an working in Washington, D. C. In Washington she had the only real home of her own she had ever had, with her own furniture and furnishings. She maintained domicile in Miami Beach merely by continuing to vote there, by absentee ballot. She no longer lived there.

Appellant had a law office after graduating from law school in 1954, at a few different locations until January 1963 when she closed it and turned existing clients over to other lawyers. However, so that former clients could find her she kept a listing in the phone book at an office of a lawyer friend.

However, she was able to return and represent her parents and other family members on occasion. She represented Alvin,Paula,and Stacie

She had to do this several times, and in fact in April 1967 the parental business had difficulties, and Appellant had to leave the home in Washington and return to Miami to take over management of the business which faced bankruptcy. Her father was developing senile behavior. Appellant, coming with one suitcase, had to remain until January, 1969 when she put her parents into retirment, closing the business. They were then in their 70's. She had to give up her own career which had been in government directing programs for improvement of education. Appellant is an educator, sociologist, and manager.

Returning to Washington she nevertheless had to return to Miami Beach for her father's illness in 1971 for a month, and in 1973 when the City of Miami Beach began condemnation proceedings against the property of the parents in eminent domain proceedings. She had to go there, but <u>never moved back.</u>

And she had to keep returning in 1974,(Ap) 1975 , 1976, 1977 as the eminent domain case proceeded and she represented her parents to keep from having to move out of the property and to obtain adequate value. The taking was not a necessity, in fact, and she was able to obtain a dismissal in Dade County circuit court after a trial on the issue of necessity.

Appellant will explain the facts leading to the instant suit later.

THE CASE IN DISTRICT COURT

This suit in federal district court arises from a probate of the estate of Maurice Horowitz in Dade County Circuit Court.The probate of the estate had been concluded and all the money distributed to the named defendants and as fees to three of the attorneys named. Appellant received nothing from the estate although she was the only person responsible for creating a value for the estate of $400,000 and acting as its personal representative by valid wills and heirship sgreements with all interested family members and removing by litigation five claimants, not family members, under an invalid will.

The distribution of the estate was accomplished by fraudulent conspiracy of the probate judge and the defendant attorneys herein who entered the case six years after appellant had performed all the work of protecting and increasing the value of the estate, and the litigation necessary to defeat an invalid will.

The probate judge and all defendants conspired to refuse to hold a trial on the binding heirship agreement which gave the estate as it would descend by law to the only two issue of decedent- appellant daughter, the eldest, and the son Alvin Horowitz, and who were named in several valid wills and as personal representatives. The invalid wills were prepared by a marauding attorney, now

deceased, who, appellant discovered, had been frequently engaged in spurious benavior in his active probate practice..After two years of litigation he was removed by appellant and her brother, paying him a settlement from their own funds. He had a strong recognition in state probate court which made judges try to help him.

After the estate was distributed with appellant being fraudulently separated from her rightful half interest and fees for her professional work appellant filed suit in state circuit court for claims against the estate for money owed her by decedent and for money owed her by the estate. These sums were well over $200,000.

These claims had been filed immediately as the probate began but were held in abeyance pending the completion of the litigation and the disposition of the estate.

After filing the suit in state court general jurisdiction appellant found the same conditions existing with that circuit court judge who knew the lawyer defendants before him and had appointed some into cases which caused him to act prejudicially.

He dismissed the case at a third hearing called by defendants after appellant/plaintiff had appeared with court reporters at the first two hearings, and after notice had been received by that judge and all defendants that plaintiff was ill and could not attend the third hearing, asking that it be reset.

That judge knew Plaintiff had an intense interest in the case and that its value was over $200,000. In fact, Plaintiff had undergone surgery for cancer, remaining in the hospital for nine days, and confined to bed, for six weeks thereafter at which time the hearing was deliberately set and case dismissed.

This was a civil rights violation and deprivation of due process in state court because of the influence of defendant lawyers.

In 1987 Plaintiff had changed her 'domicile' to Washington, D. C. Having already a permanent residence there continuously, every day, and which cost her considerable money to maintain, she removed the last vestige of legal domicile in Dade County, Florida by ceasing her voting registration, and declaring in a lawsuit then in federal court which pleadings went to each of the defendants that she declares her domicile to be changed to existing residence in Washington, D. C..

Since plaintiff already had the right to federal diversity jurisdiction she filed this suit in federal district court hoping the same preferential attitudes of judges would not be present. She was mistaken.

Title 28, Sec. 1332 permits such suit in federal court where plaintiff's legal domicile is in a different state than all the defendants. The suit is filed five years after she has made a declaration of domicile.

By Florida law suits against a decedent's estate are brought against the personal representative (executor) and are defended only by the estate, as well as suits brought on behalf of the estate. Fla. Probate Stat. 733.612(20).

Florida Probate law provides that a creditor of an estate shall present the claims to the personal representative and if denied, then at a hearing to the probate judge, and if denied, the creditor has the right to sue the estate in a court of general jurisdiction.

The 3rd District Court of Appeals Miami, Florida upheld the right of a creditor whose claims against an estate were rejected by the probate judge to sue in general jurisdiction despite failing to have given notice to the estate, declaring the statute for notice un-

constitutional. First Florida Leasing Inc., v. James Michael Watson as personal representative of the Estate of Michael Corso, 12 FLW 1265, 1987, 3DCA.

All the interested parties are joined as defendants because the assets of the estate are in their hands and that of the attorneys who received unconscionably high fees although none contributed to the benefit of the estate and did not become involved, except through the conspiracy of a state court probate judge in 1983, five years after appellant had worked as attorney and personal representative increasing the estate from an offer on the residence in eminent domain in 1973 of $100,000 to $400,000 and litigating against invalid wills, removing five claimants under those wills, and otherwise protecting estate assets as personal representative.

The attorneys caused a loss to the estate of at least $200,000 which appellant's appraisers had valued the residence as commercial property at between $648,000 and $1,000,000. Their interference when appellant had been litigating in that action since 1973, five years before decedent's death, and no one else was involved, caused appellant and her brother to settle with the condemnor and not proceed to another trial after the first trial in 1981 gave an inadequate verdict of $300,000 which appellant reversed by taking and arguing an appeal herself.

By Florida law the defendants are properly joined in this suit although they cannot defend

> "The title and interest of the heir is subject to the debts of the ancestor and the transferees of the heirs take only such title or interest as the heir had." 17 Fla. Jur. 460

The federal courts accept jurisdiction of suits against a decedent's estate.

> " A proceeding to establish or prove

> a creditor's claim against a decedent's estate is essentially an inependent suit inter parties and not a matter of pure probate jurisdiction, and the claims having been filed in the proper state court does not defeat the jurisdiction of the proper federal court to entertain the action." Farmer's Bank v. Wright, 158 F. 841.

After this case and the companion case against the family defendants for fraud were filed in federal district court, the district judge over objection of plaintiff ordered the case to be heard by magistrates. In this case Magistrate Bandstra held two hearings responding to the motions to dismiss filed by two defendants' attorneys, personal representative Smith, and Melvin Trute.challenging Plaintiff Broida's domicile as Washington, D. C. Attorney Martone was late in filing his motion to dismiss since his client had resisted service, as did all the family defendants, except Paula whose residence was found and personal service made on a second try after first resisting.

The rules of civil procedure do not provide for a defendant to enter a case whenever he so wishes. There is a 20 day limit to answer after which a default is entered on motion of plaintiff. The magistrate and judge refused to follow this rule as to Attorney Martone representing Betsy Nieves.

The evidence submitted by plaintiff unquestionably established that she had a permanent residence continuously in Washington, D. C. since 1963 and only had to establish a secondary residence in Dade County, Florida when her parents died and she acted as personal representative of both estates and continued for the estate to litigate the eminent domain case against the only asset of that estate, the residence of the decedents which was an estate by the entireties.

The magistrate was influenced by the five lawyers appearing opposing her, the fees of three named lawyers were in jeopardy, and unknown to plaintiff at the time of the hearings, the magistrate was applying to a panel of lawyers to be appointed as federal judge. The law firm of Samuel S. Smith has Mr. Smith's brother as a member of the panel recommending federal judges for Congressman Connie Mack.

Defendants entered no evidence proving Plaintiff did not have permanent residence in Washington,, D. C. but only raised questions most of which had no validity whatsoever as, for example, the attorney representing Smith presented to the court that probably residents of the District of Columbia could not appear in federal courts because said district was not a state. That young man had no sense of civil rights of U. S. citizens to suggest that some citizens would be deprived of litigation rights In fact, Title 28 makes specific provision for all citizens of the District and the Commonwealths of this Nation. The Magistrate however, was engaged by the idea and fully willing to accept it.

No affidavits or evidence or testimony was introduced by the family defendants(although the three daughters of Alvin attended both hearings) denying Plaintiff's residence in Washington, D. C.. Any such affidavits or testimony would have been perjury since they well know that Plaintiff moved to Washington, and Paula, Stephen, and Betsy visited her in her home there, with Betsy at the age of 14 spending a week with her at Thanksgiving one year. Attorney Bernard Weksler did not attend these hearings or make any statements since he has been a friend of Alvin and his family since the 50's and visited with Plaintiff after she moved to Washington when he came up for business, Plaintiff, having become an attorney in Miami, Fla. in 1954 was well known to many attorneys who knew she had moved and contacted her when they came to Washington, and other relatives,

as did other friends and acquaintances of her from the many years she had lived in Florida. Most of them had been upset that she was moving away and tried to discourage her before she moved.

Plaintiff never knew Gene Rosen who at the time she moved might have been about 16 years old, or Melvin Trute, and barely knew who Samuel S. Smith was until she spoke to him in 1977 asking him to represent her and her brother in litigating against the invalid will. None of these ever had a relationship with any member of the family, including Milton Kelner, and their first appearance was in 1983, with Smith being invalidly appointed as personal representative, the probate judge fraudulently removing plaintiff and Alvin as personal representatives who were so named in valid wills, so named by statute, and by heirship agreements, and so acting for the previous five years.

Rosen and Trute were also encouraged by that probate judge to enter the probate proceedings when they were invalidly involved.

Andre Fournier appeared for Trute in the federal court case. Martone was never involved in this estate and first appeared in this federal court case, and all his efforts make it evident he has no idea what it is about, and that includes his Answer brief. He has no knowledge or experience with probate matters which is a specialized area of law.

Over the objection of Plaintiff the Magistrate allowed Rosen, Martone, Trute to argue their motions although they had no standing by law to file motions to dismiss or to argue. In his report the Magistrate misstates and misconstrues the evidence and relied on a case which in effect actually supports Plaintiff, Hawes, v. Club Ecuestre Commandante, 598 F2d 698, 1st Cir. 1979 in which under similar circumstances the appeal court reversed the dis-

trict court which had denied diversity jurisdiction.

The district judge, Atkins, was totally confused about both cases, and showed that confusion, by setting the companion case, against the family defendants, 93-5022 for trial twice, an answer having been filed for one of the defendants and the others having resisted service, and in which the same issue of diversity had to exist.

The district judge, a senior judge, refused also to abide by the rule of civil procedure requiring the judge to review the issue de novo after plaintiff filed objections to the magistrates report which dismissed the case for lack of diversity jurisdiction.. That judge who had been assigned many local important cases also denied plaintiff Broida's motion for him to step down since he was so busy with these other cases. He accepted the magistrates report dismissing the instant case while at the same time setting the other case for trial, although the issue of diversity jurisdiction applied to the other case as well but had not been raised by the attorney, Weksler,who filed an answer. See Rule 72 (b) Rules of federal Civil Proced- for review of magistrate's Report and evidence de novo. (Ap 3,4)

After being advised that the companion case was not ready for trial, the district judge dismissed it as well. Both cases had been filed at the same time in district court, and appellant filed both at the same time in the 11th Circuit Court of Appeals. Appellant returned to her domicile in Washington, D. C. November, 1993 after filing the two appeals.

THE APPEAL IN THE 11TH CIRCUIT COURT

The appeal panel could not have read the briefs of appellant. They never addressed the issues raised of the refusal of the district judge to hear the issue himself initially, or to review the issue of diversity de novo, or the refusal of the magistrate to strike the

motions to dismiss filed by attorneys Rosen, Martone, and Trute who had no standing to defend, or the failure of defendants to submit any evidence proving plaintiff did not have a permanent residence in Washington, D. C. other than that they saw her living in Miami and appearing in these cases.

The appeal panel refused to grant oral argument to appellant. They did not have the Reply Brief of Appellant because attorney Martone had filed an Answer brief although he had no standing in the appeal as he sis not in the court below. Appellant filed a motion to strike, and also stated that it had no application to this case since he filed the same brief in the companion case and the issues were different. The clerk returned the brief and the brief responding to Smith's as well, stating two briefs could not be filed. Appellant moved that both briefs could be included in one cover since she hoped Martone's brief would be stricken for the reasons stated. No ruling was ever entered by the court until its final ruling in which at the same time it denied the motion to strike, denied oral argument, and upheld the lower court.

In fact, a couple of months before that ruling the court held oral argument in Miami, Fla. where all the attorneys live and could have notified appellant to appear there.

Appellant then moved for the court to accept the brief responding to Smith for the Petition for Rehearing.

On August 10th the panel denied the Petition for Rehearing and the motion for oral argument.

No citation of law was given for either decision of the court.

In the companion case, the clerk lost the Petitions for Rehearing, and appellant re-filed them, and the clerk then stated they had found them and presented them to the court, but

but the court has not ruled on those Petitions despite motions filed by Appellant asking for them to rule so that that case can be presented to this court with the instant case.

The appeal court has denied Appellant her constitutional right to file her suit in federal court and has continued the civil rights abuse of the court below in continued prejudice in favor of the lawyer defendants. In fact, charges of improper actions have been brought against many of the lawyers in the Florida law firm in which Samuel S. Smith is partner. One lawyer, who had been representing Smith in the probate appeals was charged with misrepresentation in a different case before the Florida Third District Court of Appeals. Two other lawyers of that firm were charged with misrepresentation in a case in federal court by a federal magistrate.(Ap 1,2,

THE BASIS FOR U. S. SUPREME COURT JURISDICTION

There can be no greater and more important constitutional right in this Nation to all its citizens and residents than in this democracy the right to move freely about the country, to choose whatever location for a residence one so desires and for whatever reason one desires, and to have even more than one residence, and to designate which such residence is the major residence which the person designates as his legal residence or 'domicile'. This right is guaranteed by the 14th amendment and 5th amendments to the U. S. Constitution. In addition there is the guaranteed right by Article IV, Sec.2, and Article III, Sec. 1 and 2 guaranteecitizens the rights to sue in federal court citizens of another state, as set forth in Title 28, and Sec. 1332.

This is a very recognizable right to those thousands of persons who come to Washington, D. C. to work in Congress, the Senate, the White House, other governmental agencies and whose employment may be of duration of many years but is still temporary, and they maintheir legal domicile in their previous resi-

dence. It is important to thousands of others in this Nation whose work takes them to other locations where they must work for years, while their families remain in a previous residence which they designate as their legal domicile.

The issues in this case of deprivation to this Petitioner of those rights, and the right to have access to federal court, where there is such diversity, and the further failure of the district court judges to follow federal rules of procedure they are required to follw, and the refusal of federal courts to apply state law when a case based on state probate procedure is brought to federal court and they are required to follow state procedure and law; and the inability for Petitioner to obtain due process including the civil rights violation of the previous state court judge where the suit was filed causing Petitioner to seek access to federal court, are all issues affecting the rights of all citizens of this Nation and require the review of this United State Supreme Court.

In Morris v. Gilmer, 129 US 315, 328 SCT 289, 32 LED 690, 1889, an early Supreme Court case with which the federal judges below are in conflict established the right of all citizens to change domcicile whenever they so wish with no period of residence necessary.

"There is no period of residency required. A citizen of the United States can instantly transfer his citizenship from one state to another."

If this were not true then such persons as former President George Bush could not have 3 residences, one in New England, one in Greater Washington, and one in Texas where he owned no residence and did not

live, having lived for years working for the U. S. government's CIA not in Texas but in Washington, D. C., and declared Texas to be his domicile from which he ran for office to become President of the United States. If this was not legal it would have been questioned. This is a usual situation with many political candidates who change their residence declaring new domicile in another state. This was done also by Robert F. Kennedy who left his home in Boston, Mass., working in Washington, D. C. living in Virginia, and then moving to New York City to run for office from New York as Senator. These are only two publicly known examples.

Is the purpose of the Constition to protect only those who become public figures? Attorney Samuel S. Smith, a member of the American Bar Association and on its Board of Governors, say so and asked Petitioner Broida at his deposition of her " Do you compare yourself with Them?" Does the Constitution not protect the rights of Petitioner Edith Broida as it protects people in public life?

Petitioner brings this case before this Court because the decisions of the federal courts below are in conflict with Morris v. Gilmer and other such Supreme Court decisions, and in conflict with the decision of another federal circuit court, Hawes v. Club Ecuestre Commandante, 598 F2d 698, 1st Cir., 1979 in which the appeal court reversed a decision of the district court which denied domicile and access to federal court diversity jurisdiction. and other federal circuit court of appeal decisions; and because the appeal court has departed from the accepted and usual course of judicial proceedings in its actions in the appeal, and sanctioned similar departures by the district court requiring exercise of this court's supervisory power; and the eleventh circuit court of appeals and the district court has decided the important question of the rights of citizens to change their domicile at will and claim diversity for suits in federal court, denying that right.

The appeal court and the district court have deprived Petitioner of her constitutional rights in order to favor attorneys whom they wish to assist.

The decisions of both courts act as a forfeiture of the property rights of Petitioner whom they are prohibiting from protecting her property rights in federal court which right is guaranteed by the constitutional provisions already cited herein by Petitioner.

In Hawes in upholding the right of Appellant to hold where was the domicile for the purpose of a federal suit the court stated

> "This is not a situation where the change in residence is made solely for the purpose of invoking federal jurisdiction, but as we have already pointed out such a motive does not defeat a bona fide change in domicile" p 702.

As applied to Petitioner herein, she established a permanent residence in Washington, D.C. in January 1963, and never moved her belongings to any other location, although she herself had to return to her parent's city to protect her property rights in her inheritance from them, and to work in their estates as personal representative, and attorney for the estates, and litigate against invalid wills, against condemnors seeking to avoid value payment for property in the estate. Petitioner had to set up a secondary temporary residence to which she did not move any of the property she had in her Washington residence, except to have to return to Washington once a year during the litigation in Miami courts, to obtain various papers in her Washington home to present them in court proceedings, such as her telephone bills showing her calls to her parents and other members of the family from her home in Washington.

Petitioner declared her Washington home as her domicile in 1987 and had already removed herself from the voting registry of Dade County, Florida, having last voted in 1986. She did not

seek federal court jurisdiction for this case until it became necessary in 1992, five years later. Obviously she did not change her domicile to file this lawsuit. In fact she changed her domicile because that is what she would have done if her parents had not been alive and living in Dade County after she moved to WAshington, and because she wanted to be certain she would not die a resident of Dade County, Florida with any estate she might have subject to those courts.

The Supreme Court has jurisdiction for the many violations of constitutional and civil rights law, as well as property and due process deprivations in both the district and appeal court.

STATEMENT OF FACTS AND PROCEEDINGS BELOW

In the district court Petitioner/Plaintiff/Appellant filed many instruments proving that she had a permanent continuous residence and domicile in Washington, D. C.

One of the most important pieces of evidence is a letter from the Liberty Mutual INsurance Company offices in Fairfax, Virginia stating that they have insured Petitioner's residence in Washington, D. C. since 1976 and including insurance continuing at that date of the trial in federal court.

This evidence is conclusive proof that Petitioner has a physical residence in Washington, D. C. and that she had insurance with this company from 1976 continuously. The statement is from the service manager and on the company's stationery. Petitioner does not know the manager and merely requested the statement to be sent to her.

To any lawyer or judge it must be obvious that an insurance company would not jeopardize itself by making a perjured statement that they are receiving insurance premiums when they are

There are myriad ways that a lawyer could conjure in which a company could be held liable.

One has to have a home to pay Homeowner's insurance.(Ap)

Petitioner filed a letter from the Supervisor of Elections of Dade County that their records show Broida as a registered voter until 1986, the last time she voted, and she had been purged from records as not having voted for two years, and that would be 1988 which is one year after she declared domicile in 1987 and four years before filing this suit.

This is the first time Petitioner was not a registered voter in Dade County, Florida having voted since her first vote at age 21. This was a removal of the only vestige of legal domicile in Dade County, Florida. She had not lived in her parent's home since before her mother died in August 3, 1977 having rented a temporary apartment because of having to be there. The residence of decedent was turned over to the condemnor after settlement of the suit and was in their possession in August,1984 but she hadn't lived in it at all, only taking her time to protect the vacant property from vandalism and to care for the grounds and structure until the suit was settled. In eminent domain proceedings in Florida government can abandon the taking and walk away without paying any compensation, therefore the property had to be protected until final resolution. The five attorneys in this case don't know that.

In addition Petitioner and her brother could have just given the property to the condemnor or deeded it to anyone else prior to entry into the probate of the five lawyers. It was theirs to do so. Then none of the lawyers of other family defendants would have gotten anything from it. Samuel S. Smith as invalidly appointed personal reprssentative, put into the case invalidly by a probate judge who

must have thought there was a lot of money in the estate took over $100,000 of the money Petitioner created for the estate. Gene S. Rosen who was not entitled to any fees unless he had increased the value of the estate, and did not, but decreased the value, representing Stacie Merrett, Petitioner's mentally deficient thirty-eight year old daughter, conspired with the parties to the heirship settlement agreement for them to breach it, and claimed that represented a benefit to the estate receiving $25,000 for his calumny, and thereafter took more fees from Stacie and her son who already were guaranteed shares from whatever the estate would have because of her condition and need, and did not require the services of a lawyer who succeeded in creating excessive litigation for his own benefit.

Milton Kelner, who never met the child he was appointed to protect as guardian-ad-litem or the mother and only caused litigation so that he could earn a fee received $10,000 for satisfying the judge with producing litigation.

If the case had been concluded before they entered they would have had nothing, and if Petitioner had not given up her own life to protect the estate property there would have been a total of $100,000 from the condemnor.

Petitioner placed other evidence into the file of her domicile including the page of the pleading in 1987 in which she declared her change of domicile. In addition she filed copies of airline tickets for travle from Miami to D. C. and return, and from travel from D. C. tp Miami, and telephone bills showing calls from her phone in Washington to her parents' phone in Miami Beach; and filed Affidavits from two friends 1) Martha Neham Edelstein whom she has known since college and who visited her in WAshington and knew her intention to remain there, 2) Phyllis Shampanier, an attorney and former member of the Board of Governors of the Florida Bar with whom she kept a listing as a lawyer after she moved to WAshington and who represented several of Petiti-

ioner's former clients and relatives, and continuously urged Petitioner to return to Florida and join her in her practice in Coral Gables.

Petitioner introduced a letter to the Internal Revenue Service in Philadelphia where she filed her returns since she lived and worked for the government in D. C. and that is where the returns went, except that she had some real difficulty with that office and failure to recieve a refund from them, which she still has not received.

Petitioner filed evidence of having purchased a car in Miami and sending the registration to D. C. so that her Virginia insurance company which had been insuring her car which she bought in the District in 1969 would continue to insure it, only to have to pay a sales tax twice, equal to the one she paid in Miami. When she had to buy her next car and she was in Miami she registered it in Florida for two reasons, to avoid paying double sales tax, and to avoid the new Florida law requiring anyone bringing a car into Florida to pay a fee, at first it was $100, but it had been raised to $400. Her Virginia insurance compnay insured it.

Petitioner filed a copy of a letter to her mother asking for compensation to pay the costs of her having to come to Florida for the eminent domain case and the months she had to stay there while still paying all her expenses in Washington; and filed instruments showing her employment by government agencies of the Department of Labor , Office of Education, Model School Division. It was for these civil rights programs and their continuation that Petitioner had moved to Washington to be involved in them. She directed the first federal National Teacher Corps in 1966.(Ap)

Petitioner maintained her bank account with the Washington bank which she opened when she first came to WAshington and still has it.

The letter to the D. C. Department of

Transportation was included in the evidence filed in the lower court.

Petitioner's evidence of permanent residence in Washington, D. C. is uncontrovertible. The issues raised by Defendants as challenges were specious and of no effect and did not disprove Petitioner's claims.

Petitioner files several of these instruments in the Appendix. All of them are in the court record.

The lower courts are in conflict with the following Supreme Court decision on domicile.

> " Domicile is residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time. Mitchell v. U. S. 88 US 352, 22 LED 584, 1875
>
> "Residence, in fact, and the intention of making the place of residence one's home are essential elements of domicile. The actual fact of residence and a real intention of remaining there as disclosed by his entire course of conduct are the controlling factors in ascertaining his domicile." Gilbert v. David 235 US 561, 35 SCT 165, 166, 59 LED 36, 1914, and the following federal decisions
>
> "A person is domiciled in a location where he or she has established a fixed habitation or abode in a particular place and intends to remain there permanently or indefinitely. The existence of domicile for purposes of diversity is determined as of the time the lawsuit is filed." Hill, 615 F2d at 889.
>
> It is important to understand the words above do not require that a person spend every day at the abode, but only that a

physical place or location which is designated as a residence is sufficient. The person does not have to stay there at all. Thousands of people move to the State of Florida in retirement still maintaining a previous abode in a former State which they maintain as their domicile. The physical applies to the location not to the person. To remain there indefinitely means to keep that residence at that location, and not that the person has to be in it at all times.

United States citizens may travel and live in other countries nevertheless maintaining a physical residence/domicile in the United States which they do not lose because of being away. Such is the situation with many actors who go on location for years,; entertainers who travel continuously; archeologists who are on location for yeear; and other scientists.

Petitioner did not have a permanent residence in Miami, Florida, and had never an intention of remaining there. Does that mean she had no domicile at all. and was a displaced person?

Another confusion in the minds of the Magistrate is the question he asked Petitioner as to whether she owned her residence in Washington, Would that mean that the millions of people in this country who have never owned a property have no domicile? People who rent a room in a hotel, or a rooming house, or someone else's home, or a maid who has a live-in job therefore have no domicile?

WHY THIS COURT SHOULD GRANT CERTIORARI

The decisions of the lower courts refusing to recognize Petitioner's domicile as being where she chooses to have it having a physical residence there for over 29 years is a deprivation of constitutional rights and a failure of due process and civil rights. The decision is made on preference rather than on law. These are issues which this Court should address and settle.

"Evidence of the residence of the plaintiff in a state other than that of the defendant is prima facie evidence of the existence of diversity of citizenship. Urschel v. Forgan, 297 F 210

"A motion to dismiss will be denied where the record indicates that the defhas not shown a complete absence of issues of fact concerning diversity of citizenship jurisdiction. Roman Mosaic Tile Co. v. Thiokol Chemical Corp. 297 F 210

CONCLUSION

For all the foregoing reasons the Petition for writ of certiorari of Edith Horowitz Broida should be granted.

Respectfully submitted,

Edith Broida

Edith Broida, Pro Se
P. O. Box 5941
Washington, D. C. 20016
301-681-2050

Certificate of Service

It is hereby certified three copies of Petition for Writ of Certiorari and Appendix were mailed by U.S. Postal Service to Samuel S. Smith, 701 Brickell Ave, Miami, Fla., 33131, Gene S. Rosen, 1550 N. Miami Gardens Drive, N. Miami Beach, Fla. 33179, Alexander Martone, 30 S.E. 7th St., Boca Raton, Fla., 33432, Bernard Weksler, 2655 Le Jeune Road, Coral Gables, Fla, 33134, Andre Fournier, P.O. Box 6250, Surfside, Fla, 11/8/95

Supreme Court, U.S.
FILED
NOV 8 1995
OFFICE OF THE CLERK

No. 95-914

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

EDITH HOROWITZ BROIDA, PETITIONER

V.

ESTATE OF MAURICE HOROWITZ, DECEASED, Through Its Personal Representative Samuel S. Smith, et al.,

Respondents

On Petition for Writ of Certiorari to the United States Eleventh Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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IN THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT
NO. 93-5023

August 10,1995

EDITH HOROWITZ BROIDA
a/k/a Edith Broida
Plaintiff-Appellant
versus

Samuel S. Smith, individually and as personal representative of the Estate of Maurice Horowitz and as attorney for personal representative, Milton Kelner, as guardian-ad-litem and attorney for guardian-ad-litem, Gene S. Rosen, individually, and representing Stacie Broida Merrett and Thomas Blaine Merrett, Bernard B. Weksler, as attorney representing Alvin Edward Horowitz, Paula Horowitz Roth, Stephen R. Horowitz, Betsy S. Nieves, Karen Horowitz Kaplan, and Paula Horowitz Roth as assignee of Stephen R. Horowitz, Betsy H. Nieves, et al.,
Defendants- Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

ON PETITION FOR REHEARING
Before: Anderson, Edmondson and Carnes, CIRCUIT JUDGES
PER CURIAM:
The petition for rehearing filed by EDITH HOROWITZ BROIDA, is denied.

ENTERED FOR THE COURT:
/S/ J. L. Edmondson
UNITED STATES CIRCUIT JUDGE
ORDER: (Separate Order, August 10,1995
Appellant's motion for oral hearing on petition for rehearing,is denied
/S/ J. L. Edmondson
Circuit Court Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
NO. 93-5023
Non- Argument Calendar
D. C. Docket No. 92-997-CV-CCA

EDITH HOROWITZ BROIDA, April 27, 1995
a/k/a Edith Broida
Plaintiff-Appellant

versus

Samuel S. Smith, Individually and as personal representative of the Estate of Maurice Horowitz and as attorney for personal representative, Milton Kelner, as guardian-ad-litem and attorney for guardian-ad-litme,
Gene S. Rosen, Individually, and representing Stacie Broida Merrett and Thomas Blaine Merrett,
Bernard B. Weksler as attorney representing Alvin Edward Horowitz, Paula Horowitz Roth, Stephen r. Horowitz,
Betsy S. Nieves, Karen Horowitz Kaplan, and Paula Horowitz Roth as assignee of Stephen R. Horowitz, Betsy H. Nieves, et al.,
Defendants-Appellees

Appeal from the United States District Court for the Southern District of Florida

(april 27, 1995)

Before ANDERSON, EDMONDSON AND CARNES, CIRCUIT Judges

PER CURIAM:

Edith Broida appeals the district court's dismissal of her pro se action for lack of subject matter jurisdiction. Because there was no diversity jurisdiction, we affirm. In addition, we deny each of the appellant's motions*

AFFIRMED
MOTIONS DENIED

*(1) Appellant's motion and renewed motion for oral argument;
(2) Appellant's motion to strike brief of appellees Betsy Nieves and Paula Roth; and
(3) Appellant's motion to file separate briefs.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
NO. 93-5023

April 27, 1995

EDITH HOROWITZ BROIDA, a/k/a
Edith Broida,
versus Plaintiff-Appellant
Samuel S. Smith, et al.
(same style)
Defendant-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
ORDER:

Appellant's motion "to accept Appellant filing of separate briefs," construed as a motion to file two reply briefs, is denied.

Appellant's alternative motion to exceed the page limitation for her reply brief is denied.

Appellant's motion to refer the previously filed motion to strike to "the panel that hears and reviews the appeal "construed as a motion to refer the motion to strike to the screening panel is granted.

J. L. Edmondson
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

EDITH HOROWITZ BROIDA,
Plaintiff,
vs.
Estate of Maurice Horowitz
through Samuel S. Smith as
Personal Representative, etc. at al.,
Defendants.

Case No.92-997
Civ-ATKINS

ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING DEFENDANTS MOTIONS TO DISMISS AND DENYING PLAINTIFF'S MOTION FOR HEARING AND MOTION TO FILE SUPPLEMENTAL OBJECTIONS

THIS CAUSE is before the court on the following;(1) Defendant Samuel S. Smith's Motion to Dismiss (D.E. 9); (2) Defendant Gene S.

Rosen's Motion to Dismiss (D.E. 10); (3) Motion of Defendant Karen H. Kaplan to Dismiss (D.E. 29); (4) Motion to Dismiss of Betsy H. Nieves (D.E. 38)(5)Plaintiff Motions for Hearing (DE 77 and DE 80)and to Respond to Law in Magistrate's Report and Recommendation (DE 79)After careful review of the motions, the Magistrate Judge's Report and Recommendation (DE 75), the relevant law and plaintiff's objections to the Report and Recommendation (DE 78), it is

ORDERED AND ADJUDGED as follows:

(1) The Magistrate Judge's Report and Recommendation (DE 75) is hereby ADOPTED IN FULL and made the order of this court. Accordingly, it is further

ORDERED AND ADJUDGED that

(2) Defendant Samuel S. Smith's Motion to Dismiss (DE 9) is GRANTED:

(3) Defemdamt Gene S. Rosen's Motion to Dismiss (D E 10) is GRANTED:

(4) Motion of Defendant Karen H. Kaplan to Dismiss (DE 29) is GRANTED;

(5) Motion to Dismiss of Betsy H. Nieves (DE 38) is GRANTED; and

(6) This action is dismissed with prejudice.

In addition,

(7) Plaintiff's Motion for Hearing (DE77)and (DE80) and for Five Days to Respond to Law in Magistrate's Report(DE79) are DENIED.

Plaintiff has had ample opportunity to present her legal arguments on this issue, has already filed lengthy objections to the Report and Recommendation and, as she acknowledges, has previously submitted applicable case law. Thus, the court finds it unnecessary to hear additional argument or to receive additional memoranda on this matter.

DONE AND ORDERED AT Miami, Florida,this 7th day of June, 1993.

C. Clyde Atkins

SENIOR UNITED STATES DISTRICT JUDGE

CC: The Honorable Ted E. Bandstra
All counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 92-997-CIV-ATKINS

EDITH HOROWITZ BROIDA,
Plaintiff

vs.

ESTATE OF MAURICE HOROWITZ,
through its Personal Representative
Samuel S. Smith, et al.,
Defendants.

REPORT AND RECOMMENDATION

THIS CAUSE is before the Court on (1) defendant Samuel S. Smith's Motion to Dismiss filed on May 26,1992; Defendant Gene S. Rosen's Motion to Dismiss filed on May 27, 1992; (3) Motion of Defendant Karen H. Kaplan to Dismiss filed on June 18, 1992; and Motion to Dismiss of Defendant Betsy H. Nieves filed on July 9,1992. On June 29, 1992 these and all other pretrial Motions in this case were referred to United States Magistrate Judge Ted E. Bandstra by the Honorable C. Clyde Atkins pursuant to 28 USC Sec.636(b). Accordingly the undersigned heard oral argument on these motions on September 10, 1992, and thereafter granted the parties (60) days leave to conduct discovery solely on the issue of this Court's diversity jurisdiction over this action and to file supplemental motions to dismiss together with any factual materials obtained through discovery on this jurisdictional issue. Following the conclusion of this limited discovery period, the undersigned conducted a supplemental hearing on these motions to dismiss on April 6, 1993. Having carefully considered the pleadings, all materials relevant to the jurisdictional issue, oral argument of counsel and appli-

cable law, the undersigned respectfully recommends that all four motions be GRANTED due to this Court's lack of subject matter jurisdiction as explained below.

INTRODUCTION

On May 1, 1992 Edith Horowitz Broida ("plaintiff"),proceeding pro se, commenced this action by filing a complaint against the Estate of Maurice Horowitz, its personal representative, its distributees and their counsel ("defendants"), for "payment of claims" allegedly due and owing from the Estate which was previously administered and discharged in the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, Probate and Guardian Division (Case No. 78-1333). In Count I, plaintiff, the daughter of the decedent, seeks payment of $195,000 for prior debts of decedent allegedly owed to plaintiff. In Count II, plaintiff, appears to claim monies allegedly borrowed from from the Estate of Ann Horowitz (plaintiff's deceased mother) to fund the Estate of Maurice Horowitz. In Count III, plaintiff seeks payment for debts allegedly due to the Estate of Ann Horowitz. In Count IV, plaintiff seeks the return of the unused portion of the family allowance and elective share with interest. In Count V, plaintiff seeks payment of fees for the legal services she allegedly performed on behalf of her family members pursuant to an agreement. In Count VI plaintiff seeks additional payment for legal services she allegedly rendered in connection with a prior eminent domain proceeding. Finally,plaintiff demands in Count VII, that the distributees and attorneys repay the monies

they have received from the Estate.

Plaintiff alleges that the Court has original jurisdiction to entertain this action based on diversity of citizenship pursuant to 28 U.S.C. Sec 1332. Specifically plaintiff alleges that she is a citizen of Washington, D. C., and that all other defendants, with the exception of Stephen H. Horowitz, are citizens of the State of Florida. Defendant Stephen H. Horowitz is alleged to be a citizen of California. In addition, plaintiff invokes the federal question jurisdiction of this Court conferred by 28 U.S.C. Sec. 1331 based on alleged civil rights violations under 42 U.S.C. Sec. 1983.

Defendants Samuel S. Smith, individually and as personal representative of the Estate of Maurice Horowitz; Gene S. Rosen, individually and as counsel for certain distributees; and Karen H.Kaplan and Betsy H. Nieves, distributees, have moved to dismiss this action on several grounds. First, defendants argue that this Court lacks subject matter jurisdiction over the complaint in that there is no diversity of citizenship between plaintiff and defendants. In support thereof, defendants argue that at all times since the commencement of this action, plaintiff has been a citizen and resident of the State of Florida. Defendants further note and the complaint alleges that most of the defendants are citizens of Florida. Consequently Defendants argue that diversity of citizenship cannot serve as a basis for establishing this Court's jurisdiction over the subject matter of the complaint.

Second, defendants argue that

plaintiff fails to state a claim for civil rights violations arising under 42 U.S.C. Sec. 1983 so that this statute cannot confer original jurisdiction upon this Court.

Third, defendants argue that the claims alleged in plaintiff's complaint, either directly or indirectly, relate to the prior administration and/or distribution of the Estate of Maurice Horowitz which has been resolved pursuant to a final judgment entered in the Probate Division of Dade County Circuit Court on December 8, 1989. See, In Re Estate of Maurice Horowitz, Case No. 78-1553. Defendants argue that all issues raised by the instant complaint have been previously adjudicated in the state probate proceedings. Thus, defendants contend that the doctrines of res judicata and collateral estoppel bar plaintiff from relitigating her claims in federal court.[1]

CONCLUSIONS OF LAW

A. Diversity Jurisdiction

The primary issue raised in these motions is whether this Court has subject matter jurisdiction over the claims raised in the complaint. As discussed above, plaintiff attempts to invoke this Court's jurisdiction based on diversity of citizenship pursuant to 28 U.S.C.(1332(a)(1), by alleg-

[1] In response to defendants' motions to dismiss, plaintiff has filed a series of motions to strike(D.E.23,31,59), which the undersigned has addressed by separate order.

ing that she is a citizen of Washington D.C., and that defendants are citizens of Florida and California. Defendants challenge plaintiff's allegation of out-of-state citizenship, arguing that plaintiff is actually a citizen of Florida and therefore jurisdiction fails for lack of complete diversity.

Evaluating this issue, the undersigned begins by noting that 28 U.S.C. Sec. 1332(a)(1) provides:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum of value of $50,000, exclusive of interest and costs, and is between-
>
> (1) citizens of different states;....

As the party seeking to invoke this Court's jurisdiction under this diversity statute, plaintiff has the burden of proving that complete diversity of citizenship exists between the parties, i,e, plaintiff must have citizenship different from that of each defendant. Hawes v. Club Ecuestre El Comandante, 598 F2d 698, 702(1st Cir.1979). Such diversity of citizenship must exist at the time this action was filed. Smith v. Sperling, 354 U.S. 91,93,n1(1957).

In order to be a citizen of a state the meaning of the diversity provision a natural person must be both a citizen of the United States and a domiciliary of a state. Las Vistas Villas,S.A. v. Petersen, 778 F. Supp 1202,1204(M.D. Fla. 1991). [2] In this context, citi-

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2The word "States" as used in Sec. 1332 includes the District of Columbia. See 28 U.S.C. Sec. 1332 (d).

zenship and domicile are synonymous. Freeman v. Northwest Acceptance Corp, 754 F2d 553,555(5th Cir.(1985).Domicile is defined as"a residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time." Id.,quoting Mitchell v. 88 U.S. (21 Wall) 350,352 (1875). Simply stated, domicile is determined by two factors; residence and intention to remain. Las Vistas Villas, at 1204. In examining these two factors, a court must consider the totality of the evidence of a person's contacts with a state and of her intent to remain there. See Willis, 651 F.Supp at 601. Thus, domicile is evaluated in terms of objective facts so that statements of intent are entitled to little weight when in conflict with facts. See Freeman v. Northwest Acceptance Corp, 754 F2d at 556.

In this case, the objective facts reveal that plaintiff moved to Miami Beach, Florida in November 1934. She attended college in Florida and thereafter began her working life in a women's apparel store operated by her father on Miami Beach . Plaintiff married in 1941 and gave birth to a daughter in Miami Beach on Septtember 21, 1943. Following plaintiff's divorce in 1949, she attended law school at the University of Miami where she earned a law degree. In 1954, plaintiff became a member of the Florida Bar and began practicing law. In January 1963 plaintiff moved to Washington D. C. where she obtained employment with the federal government and participated in several organizations and/or programs including the Foggy Bottom Neighborhood Association, the "Future for

Jimmy" program and the "Upward Bpund"* Program. While maintaining her residence in Washington D.C., plaintiff periodically returned to Florida for extended visits between 1963 and 1971 to attend to family matters. In 1972* plaintiff returned to Florida in order to handle eminent domain proceedings involving her parents' residence on Miami Beach. After approximately five years of litigation, these proceedings concluded and plaintiff returned to Washington D.C. for a brief period of time* Upon the death of plaintiff's mother in 1977, plaintiff returned to Florida where she has continuously spent the last sixteen years embroiled in litigation concerning the probate of both her parents' estates and other related matters. In 1986 plaintiff ran for Dade County Circuit Court Judge. Her campaign brochure lists a myriad of organizations in which plaintiff was a member including, inter alia, the Florida Bar, the Florida Association of Women Lawyers, The Miami Beach Bar Association, The City of Miami Downtown Planning Commission,and Miami Citizens Against Crime. Plaintiff last voted in Florida in 1986.

Most significantly, at the commencement of this lawsuit, and continuing to date, plaintiff receives her mail at a P.O. Box located in Miami Beach, Florida. She maintains an unlisted telephone number in Florida and utilizes an answering located in North Miami. Plaintiff does not presently have a phone listing in Washington D.C. Plaintiff also has a valid driver's license issued by the State of Florida and owns an automobile registered in Florida. Indeed, plaintiff spends and has spent the overwhelming majority of her time in Florida since 1977 except for brief round-

*Petitioner's Note Paid Director by D.C. Model School Div. See Ap;*1974 *Proceedings concluded 1984 for Estate

trip visits to Washington D. c. primarily on her birthday or during the holiday season.

Notwithstanding this evidence, plaintiff urges this Court to view her presence in Florida since 1977 as temporary based on her desire to return to Washington, D.C., her 'declared' domicile, and the presence of her alleged physical residence in Washington D.C. In support thereof, plaintiff points to a petition for removal dated December 7, 1987, filed in a prior probate proceeding, in which she alleges that she was a citizen of the State of Florida until December 4, 1987, when she declared that she was a citizen of Washington D.C. Specifically the petition provides in pertinent part:

> The above-entitled action wholly involves citizens of different states. At the commencement of this action in Dade County, Florida, petitioner herein was a resident and citizen of Dade County, Florida , as were the other named defendants in the suit.
>
> a. Petitioner Edith Horowitz Broida is no longer a citizen of Dade County, Florida although residing in Florida. Said petitioner has declared her citizenship as being the District of Columbia, Washington, D. C. where she established residence in January 1963 and has maintained it continuously since. Petitioner declares that citizenship as of December 4, 1987.

See D.E. 55, Exhibit A.[3] Based pri-

[3] Significantly, the proceedings which plaintiff attempted to remove via this petition were remanded to state court.

marily on this"declaration", plaintiff contends that she was a citizen of Washington D. C. at the commencement of this action. See Ogden v. Ogden, 33 So2d 870 (Fla. 1947)("the best proof of one's domicile is where he says it is.") Plaintiff's position is further exemplified by her deposition testimony in which she stated:

Q. Specifically you say you changed your domicile. In a nutshell, how did you do that?

A. By saying so. That's how you do that?

Q. Other than your declaration, what changed on December 4, 1987?

A. Other than my declaration, what changed?

Q. Yes.

A. My declaration changed where I am domiciled.

Broida Deposition,pages 38-39.

With regard to plaintiff's alleged residence in Washington, D. C., plaintiff submits a copy of a letter from Liberty Mutual Insurance Company, Fairfax, Virginia, dated August 17, 1992, stating that it has been issuing homeowners insurance policies on the "Washington D.C. residence of Edith Broida" from 1979* through 1992 and that it also insures her automobile. See Docket Entry 42. However, plaintiff fails to submit the actual policies on this alleged residence. In addition, plaintiff failed to provide an address for this residence or information on whether she owns or rents the residence. Indeed, plaintiff candidly stated,"I will not answer any questions about my residence in either location, in Miami or Washington, and don't ask me any more

*Petitioner's note: error, the letter, Appendix,states date of 1976.

questions on it." Broida Deposition, page 16.

As further evidence of a Washington, D.C. domicile, plaintiff submits the affidavits of Martha Neham Edelstein and Phyllis Shampanier, two long time acquaintances of plaintiff,* who both attest, based on conversations with plaintiff, that plaintiff has a residence in Washington, D. C.*

Reviewing the objective facts outlined above, the undersigned finds that plaintiff has failed to sustain her burden of showing that she is a citizen of Washington, D. C. Specifically, the undersigned places little weight on plaintiff's "declaration" and proof of residency in view of the objective evidence indicating to the contrary. As stated by the Fifth Circuit in Freeman v. Northwest Acceptance Corp. supra:

...Words may be evidence of a man's intention to establish his domicile at a particular place of residence, but they cannot supply the fact of his domicile there. In such circumstances, the actual fact of residence and a real intention of remaining there, as disclosed by his entire course of conduct, are the controlling factors in ascertaining his domicile.

Here, plaintiff's course of conduct does not show that she ever changed her domicile from Florida to Washington D.C. at any time after her declaration in 1987. Significantly, - plaintiff has failed to present any objective evidence whatsoever of any severing of ties to her Florida domicile subsequent to this declaration.

* Petitioner's Note. two 'friends', Edelstein visited Pet. in her Washington residence; colleague Shampanier wrote her in Washington. See Ap

Moreover, the complaint's factual allegations reflect plaintiff's continuous residency in Dade County, Florida since approximately 1977.*

In summary, the undersigned finds that Plaintiff was a citizen of Flor ida at the time she filed this action. Accordingly, the undersigned recommends that defendant's motions to dismiss be granted pursuant to Fed.R. Civ.P. 12(b)(1) for lack of diversity jurisdiction.

B. Federal Question Jurisdiction

Defendants next contend that plaintiff has failed to establish this Court's jurisdiction based on federal questions arising out of her civil rights claim brought pursuant to 42 U.S.C. Sec. 1983. In order to state a claim under Sec. 1983, a complaint must adequately allege that the conduct complained of (1) was committed by a person acting under color of state law, and (2) deprived the complainant of rights, privileges, or immunities secured by the Constitution of law of the United States. Harvey v. Harvey, 949 F2d 1127(11th Cir. 1992), citing Flagg Brothers, Inc. v. Brooks, 436 U.S. 149, 156-57, 98 S. Ct. 1729,1733 (1978).

Reviewing the complaint, the undersigned finds that plaintiff has failed to allege that she was deprived of any right or privilege protected by the United States Constitution or any federal law. Plaintiff alleges that the defendant lawyers improperly influenced the judges presiding over plaintiff's state court proceedings in violation of her constitutional rights to due process and equal protection of the law. Cpt.para 10. However, plaintiff fails to allege any state action on the part of

*Petitioner's note: Ignored by the Court- she has been personal representative and attorney for 2 estates.

the lawyer defendants as required for a civil rights claim. See Fast v Wead, 509 F.Supp. 744(N.D. Ohio 1981) (conduct of clients in representing clients does not constitute state action under color of state law). Accordingly, the undersigned finds that plaintiff has failed to state a claim under 42 U.S.C. Sec. 1983. In so finding , the undersigned notes that plaintiff apparently fails to comprehend that the federal courts ordinarily have no jurisdiction to review state court proceedings. Explaining the court's lack of jurisdiction in an analagous matter , the Honorable James Lawrence King stated:

> The plaintiff has wrongfully involed this court's original jurisdiction to entertain what is essentially a request for an appellate review of the above-described state court ruling. Therefore, the complaint in its entirety is dismissed, pursuant to FED.R.Civ. P. 12(b)(1), for lack of jurisdiction over the subject matter. It is well settled law that a plaintiff may not seek review of a state court ruling simply by alleging a civil rights violation in his complaint. Even where there is a constiutional error in the state court's decision, the plaintiff's sole recourse is to the state appellate court or the United States Supreme Court, not to the United States District Court. See Hagerty v. Succession of Clement, 749 F2d 217(5th Cir. 1984); Reynolds v. State of Ga., 640 F2d 702 (5th Cir.1981) Dist. of Columbia Court of Appeals v. Feldman, 103 S.Ct. 1303(1983);

Rooker v. Fidelity Trust Co., 44 S.Ct 149 (1923).

See Final Order Granting Defendant's Motion to Dismiss, Pruessman v. McDonald, Case No. 89-1613-Civ-King (S.D. Fla. 1989). Here, as in Preussman, plaintiff's recourse is to the state appellate court or to the United States Supreme Court. The fact that plaintiff was unsuccessful in these forums does not provide this federal court with jurisdiction to decide her claims.*

SUMMARY

Based on the foregoing, the undersigned recommends:

(1) that Defendant Samuel S. Smith's Motion to Dismiss be GRANTED:

(2) that Defendant Gene S. Rosen's Motion to Dismiss be GRANTED:

(3) that the Motion of Defendant Karen H. Kaplan to Dismiss be GRANTED; and

(4) that the Motion to Dismiss of Betsy H. Nieves be GRANTED."

The parties may serve and file written objections to this Report and Recommendation with the Honorable C. Clyde Atkins, United states District Judge, within ten (10) days of receipt. See 28 U.S.C. Sec 636(b)(1)(C); United States v. Warren, 687 F2d 347 (11th Cir.1982),cert.denied, 460 U.S. 1087 (1983); and Hardin v. Wainright, 678 F2d 589(5th Cir.Unit B 1982); see also Thomas v. Arn, 474 U.S. 140(1985)

RESPECTFULLY SUBMITTED in Miami, Florida, this 20th day of May, 1993.

/S/ Ted E. Bandstra
TED E. BANDSTRA
UNITED STATES MAGISTRATE JUDGE

* Petitioner's Note: Hon. King is a fellow Distr. court Judge, and not a

Copies furnished to:
Honorable C. Clyde Atkins
All counsel of record

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[4] Having so recommended, the undersigned finds it unnecessary to address defendants' res judicata and collateral estoppel arguments as further grounds for dismissal.

n

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*Petitioner's note cont'd: reported decision. We have no knowledge of that case. This Magistrate ignored petitioner's cited federal law for suits between heirs on claims, and state probate law providing such suit. This case was not decided in state court but dismissed in violation of civil rights as influenced by defendant lawyers conspracy with state judge. Magistrate refused petitioner to argue grounds other than diversity but here rules on them, a further civil rights due process violation.

CENTERPOINT II
SUITE 500
4000 Legato Road
Fairfax, Virginia 22033-4003
Telephone (703) 385-4444
FOR MAIL ONLY
P.O. Box 900
Fairfax, Virginia 22030-0609

LIBERTY
MUTUAL

August 17, 1992

This is to certify that Liberty Mutual Insurance Company, Fairfax Virginia office has been issuing Homeowner's Insurance policies on the Washington, D. C. residence of Edith H. Broida every year from 1976 to and including 1992.

This Virginia office services the Greater Washington area.

In addition Mrs. Broida's automobile has been continuously insured by this office since before 1976.

Service Manager
Title

/S/ Sheila Mitchell

METROPOLITAN DADE COUNTY, FLORIDA
METRO-DADE (Logo)

(LOGO)
METRO DADE CENTER
OFFICE OF THE SUPERVISOR OF ELECTIONS
SUITE 1910
111 N.W. 1st Street
Miami, Florida 33128-1962
306-375-5563

Mailing Address:
P.O.Box 012241
Miami, Florida
33101-2241

September 11, 1992

To whom it may concern:

The Metro-Dade Elections Department has records showing that Edith E. Broida last registered to vote on March 27, 1950. Anytime an elector does not vote in a two year period a notice is sent out to keep the elector's registration records active.

No response was made to a notice sent to Ms Broida, therefore her record was purged in 1989.

The last time she voted was November 4, 1986.

Very truly yours,

/s/Milton L. Collins
Milton L. Collins
Assistant Supervisor of Elections

AFFIDAVIT OF MARTHA NEHAM EDELSTEIN

STATE OF FLORIDA)
COUNTY OF DADE) SS:

Before me the undersigned authority, duly qualified as a notary public in the State of Florida, personally appeared Martha Neham Edelstein, to me known, and upon oath, duly sworn, deposes and says:

1.My name is Martha Neham Edelstein

2. I am a resident of Dade County, Florida

3.I have known Edith Horowitz Broida since 1938. We both attended the University of Miami and majored in the School of Education.

3. We have been friends continuously since then.

4. My parents were residents of Miami Beach since the early 20's.

5. I knew the parents of Edith and was in their home many times,and also in their store. I knew Edith's husband and her daughter Stacie. I have also seen her grandson Thomas Blaine.

6. Edith resided with her parents at 1931 Meridian Avenue, Miami Beach.

7. After the death of her father and she and her brother Alvin were contesting the Will prepared by attorney Harold Shapiro which was dated about a month before her father's death I stated to Edith: " I wondered if you knew that your father has been senile for a number of years."

8. I testified at the trial on the Will contest against that Last Will, called by Edith and her brother Alvin, that their father had definitely lacked his former mental

faculties and would not have had testamentary capacity to make a Will in the last five years of his life.

9. I know that Edith moved to WAshington, D.C. in January 1963. My sister lived in Maryland outside Washington. I was in Maryland to visit my sister. My sister and I both visited Edith where she lived in Washington, D. C.

10. Edith distinctly stated that she was moving to Washington to work for the federal government to try to plan programs to improve the educational system.

11. Edith has returned from Washington many times for the needs of her parents and daughter.

12. In 1967 and 1968 I saw her in the store of her parents working there and managing it because of business difficulties. She said she is there temporarily hoping to return to Washington as soon as the problems are resolved.

13. I saw her in 1971 when her grandson was born and she came down for the birth. Again she came down for her father's health, who was hospitalized with a heart attack.Again she came for a lawsuit against her parent's home by the City of Miami Beach, and came again for that lawsuit.

14. Her mother died in 1977 while she was here. Edith had a multitude of family problems. She had to take charge of her mother's 85 year old sister whose husband had died and took care of problems of that husband, his burial and his financial affairs as well.

15. Her father died in February 1978 and she has said that because of the two estates she has had to be here continuously except for quick trips back to her home in Washington.

16. Edith has always made it clear to me that she prefers to live in Washington, that she loves that City, and enjoyed her work there. I have told her many times that she should have just returned to Washington, where she most wanted to be, after the deaths of her parents.

17. She has told me that in 1987 she changed her domicile, that is, her legal residence to Washington, D. C.

Further Affiant Saith Not.

/S/ Martha Neham Edelstein
E342-554-24-958

Subscribed and sworn to before me Witness my hand and seal this 14th day of September, 1992.

/s/Inna Sandler
Notary Public, State of Florida at Large

My Commission Expires: 4/96

Notary Public
State of Florida

Inna Sandler
My Commission
#CC194323
Expires: April 16,1996
Bonded Thru Notary Public Underwriters

AFFIDAVIT
OF PHYLLIS SHAMPANIER

Before me the undersigned authority, duly qualified as a notary public to take acknowledgements in the State of Florida, personally appeared Phyllis Shampanier, to me known, who upon oath, being duly sworn, deposes and says:

1. My name is Phyllis Shampanier, and my address is 8115 S.W. 17th Terrace, Miami, Florida.

2. I am an attorney at law practicing in Dade County since 1953 when I graduated from the University of Miami School of Law.

3. I have known Edith Broida since law school.

4. I know that Edith moved to Washington, D.C. She referred several clients of hers to me when she moved. Her daughter Stacie also used my services. She had an attorney listing at my office in Coral Gables which was discontinued when I moved into a large firm on Miami Beach.

5. Several times when Edith came back to visit from Washington I asked her why she doesn't come back and join me in practice, showing her space adjacent to mine which could be joined to mine. Her reply always was that she was happy in Washington and enjoyed the work she was doing in government agencies and did not want to return to Dade.

6. I do know that she had to have a protracted stay for her parent's business in the late sixties. And I know that she has been in Miami for a eminent domain case on her parents' property, and that they died in the late 70's and she has been involved

in their estate probates and litigation, which has become another protracted stay.

7. I believe that Edith's intention has always been since she moved to Washington to be there indefinitely and not be in Florida.

8. We have corresponded and I know that she has resided in Washington and still has a residence there as she has told me.

Further Affiant Saith Not.

/S/ Phyllis Shampanier
Phyllis Shampanier

Subscribed and sworn before me.
Witness my hand and seal this
12th day of April, 1993.

/S/ Karla Haspael
Notary Public, State of Florida
at Large
My Commission Expires:
Notary Public, State of Florida
My Commission Expires Aug 25, 1994
Bonded Thru Notary Public Underwriters

26 (Copy of Petitioner's Letter to her Mother, from Washington to M.B.)

Dear Mother, 7/30/74

Thank you, I received the $500. It helps a little but not much. In the past year I spent 8 months in Miami. During that time I still have to pay rent on my apartment $228 a month, telephone $10 a month, gas $200 a month-a total of $240 a month-for 8 months that is $1920, which is already more than you pay rent on your house for a whole year. Your taxes are your rent. The three months I was there last time or any time I disrupt my own life completely. When I come back I have all kinds of problems because I haven't been home that then take me months to straighten out. Then there is the cost of the fare, tips, food each trip is at least $220 for that. What you gave me when I was there only barely covers some things- The cars I rent. Here I have my car in storage for which I pay $27 a month.

Then the strain on me there generally sends me to the doctor when I get back with something.

Last time on the trip back I got off the train with a flaming red right eye.

Ann Horowitz kept daughter Broida's letters to her with the envelopes.

SUPERINTENDENT OF SCHOOLS
FRANKLIN ADMINISTRATION BUILDING
13th and K Street N.W.
Washington, D. C.

Model School Division

March 19, 1965

Mrs. Edith E. Broida
824 New Hampsire Avenue, N. W.
Washington, D. C.

Dear Mrs. Broida:

A board order appointing you as Coordinator of the Summer Enrichment Program(Model School Division) was submitted to the Board of Education at the meeting held on March 17, 1965.

Before you can be placed on the payroll, it will be necessary for you to come in and sign certain papers. Please call me at Sterling 3-6111, extension 231,232 and let me know when you can come in to sign these papers.

Yours truly,

/S/ Doris P. Lee
Doris P. Lee
Administrative Aide
Model School Division

Supreme Court, U.S.
FILED
JAN 11 1996
CLERK

No. 95-914

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

EDITH HOROWITZ BROIDA,

Petitioner,

v.

ESTATE OF MAURICE HOROWITZ, Through Its Personal Representative, Samuel S. Smith, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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MIA:20446:3

20 pp

QUESTIONS PRESENTED

WHETHER THE RULING OF THE DISTRICT COURT DISMISSING THE PETITIONER'S CAUSE DUE TO LACK OF DIVERSITY OF CITIZENSHIP BETWEEN THE PLAINTIFF AND THE DEFENDANTS WAS CLEARLY ERRONEOUS.

PARTIES TO THE PROCEEDING

The parties to the proceeding are:

The Honorable C. Clyde Atkins, Trial Judge

The Honorable Ted Bandstra, Magistrate Judge

Edith Broida, Petitioner.

Saul Broida, as Trustee for Thomas Blaine Merrett, Respondent.

Alvin Edward Horowitz, Respondent.

Karen Horowitz Kaplan, Respondent.

Paula Horowitz, assignee of Stephen R. Horowitz, Respondent.

Stephen R. Horowitz, Respondent.

Milton Kelner, guardian-ad-litem and counsel for guardian-ad-litem, Respondent.

Stacie Merrett, Respondent.

Thomas Blaine Merrett, Respondent.

Betsy H. Nieves, Respondent.

Gene S. Rosen, Respondent, and counsel for himself and Stacie Broida Merrett and Thomas Blaine Merrett.

Paula Horowitz Roth, Respondent.

Samuel S. Smith, individually and as personal representative of the Estate of Maurice Horowitz, Respondent.

Bernard B. Weksler, counsel for Respondents Alvin Edward Horowitz, Paula Horowitz Roth, Stephen R. Horowitz, Betsy H. Nieves and Karen Horowitz Kaplan.

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OPINIONS BELOW

The opinions below are unreported. The order of the United States District Court for the Southern District of Florida dismissing the Petitioner's action was issued on June 7, 1993 in case 92-997 Civ.-Atkins. This order can be found on pages 3 and 4 of the Petitioner's Appendix to the Petition for a Writ of Certiorari. The opinion of the United States Court of Appeals for the Eleventh Circuit affirming the District Court's dismissal of the Petitioner's action was issued on April 27, 1994, and can be found on Page 2 of the Petitioner's Appendix to the Petition for a Writ of Certiorari. The Eleventh Circuit denied the Petitioner's Petition for Rehearing on August 10, 1995, and this order can be found on page 1 of the Petitioner's Appendix to the Petition for a Writ of Certiorari.

JURISDICTIONAL STATEMENT

The Petition falls within the Court's jurisdiction to review final decisions of the federal courts of appeal by certiorari. 28 U.S.C. § 1254(1). The Eleventh Circuit Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291 pertaining to review of a final decision by a United States District Court.

STATEMENT OF THE CASE

The Respondent has been presented with the unenviable task of formulating a response to an utterly absurd, incoherent, and improper Petition. Lost amid the rhetoric of the Petition is the real issue at hand, which has been properly ruled upon by the District Court, and affirmed by the Eleventh Circuit. Stated succinctly, the Petitioner's case was dismissed because she failed to sustain her burden of establishing complete diversity of citizenship between herself and the Defendants. A review of the facts and the caselaw on this issue will show that the decisions of the lower courts on this issue were correct, and that this Petition should be denied.

Those portions of the Petition which appear to address issues other subject matter jurisdiction can only be characterized as irrelevant conspiracy theories, and do not merit a response. Even if these issues merited a response, they are presented by the Petition in such an unfocused and confusing manner that the Respondent is unable to discern what these other issues are. (Petition p. i-iv). Thus, while the Petition seemingly presents five separate questions to the court, the Respondent

will only address the single issue of subject matter jurisdiction as it relates to diversity of citizenship.

This proceeding commenced upon Ms. Broida's filing of a Complaint against the Estate of Maurice Horowitz, the personal representative, Samuel S. Smith, the distributees and their counsel seeking the payment of claims allegedly due and owing to Ms. Broida from that estate. (Petitioner's Appendix p. 6-7). That estate had been fully administered and discharged in the Eleventh Judicial Circuit Court in and for Dade County, Florida. (Petitioner's Appendix p. 6). Ms. Broida unsuccessfully appealed the Final Judgment in probate to the Third District Court of Appeal, the Florida Supreme Court and United States Supreme Court.

Ms. Broida alleged that the District Court had subject matter jurisdiction due to the diversity of the citizenship between the plaintiff and the defendants, and federal question jurisdiction for alleged civil rights violations of 42 U.S.C. § 1983. (Petitioner's Appendix p. 7).

Defendants Samuel S. Smith, individually and as personal representative, Gene S. Rosen, Karen H. Kaplan, and Betsy H. Nieves, moved to dismiss Ms. Broida's complaint. (Petitioner's Appendix p. 7).

Mr. Smith alleged that the court lacked subject matter jurisdiction because there was no diversity of citizenship between plaintiff and defendants. (Petitioner's Appendix p. 7). Mr. Smith asserted that at the commencement of this action that plaintiff was a citizen of the State of Florida rather than of the District of Columbia as she claimed. (Petitioner's Appendix p. 7). Mr. Smith also argued that plaintiff failed to state a claim for civil rights violations arising under 42 U.S.C. § 1983, and therefore, there was no federal question jurisdiction. (Petitioner's Appendix p. 7-8).

By order dated June 29, 1992, these motions to dismiss were referred to the United States Magistrate Judge Ted E. Bandstra by the Honorable C. Clyde Atkins pursuant to 28 U.S.C. § 636 (b). (Petitioner's Appendix p. 7). After limited discovery, extensive motions and memorandums, primarily by Ms. Broida, Magistrate Judge Bandstra issued a report and recommendation determining that Ms. Broida was a citizen of Florida at the time of the commencement of the action, and therefore, there was no diversity of jurisdiction. (Petitioner's Appendix p. 5-18). Magistrate Judge Bandstra also determined that the plaintiff had failed to state the claim under 42 U.S.C. § 1983, and therefore, there was

no federal question jurisdiction. (Petitioner's Appendix p. 15-17). The magistrate judge recommended that the motion to dismiss be granted. (Petitioner's Appendix p. 17). Ms. Broida objected to the report and recommendation. (Petitioner's Appendix p. 4). Upon review, The Honorable C. Clyde Atkins entered an order adopting the report and recommendation, granting Defendants' motions to dismiss. (Petitioner's Appendix p. 3-4). In the appeal before the Eleventh Circuit, Ms. Broida did not challenged the determination that she failed to state a claim under 42 U.S.C. § 1983.

In an unpublished opinion dated April 27, 1995, the United States Court of Appeals for the Eleventh Circuit affirmed the ruling of the District Court. (Petitioner's Appendix p. 2).

REASONS FOR DENYING THE WRIT

I. **THE WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE RULING OF THE DISTRICT COURT DISMISSING THE PETITIONER'S CAUSE DUE TO LACK OF DIVERSITY OF CITIZENSHIP BETWEEN THE PLAINTIFF AND THE DEFENDANTS WAS NOT CLEARLY ERRONEOUS.**

Magistrate Judge Bandstra found that Ms. Broida failed to sustain her burden of proving complete diversity of citizenship. *Hawes v. Club Ecuestre El Comandante*, 598 F.2d 698, 702 (1st Cir. 1979). That determination must be affirmed unless clearly erroneous. *Galva Foundry Company v. Heiden*, 924 F.2d 729 (7th Cir. 1991); *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986); *Scoggins v. Pollock*, 727 F.2d 1025, 1027 (11th Cir. 1984).

The decision of the district court was not clearly erroneous. By her own admission, Ms. Broida was domiciled in Florida until December 4, 1987. (Petitioner's Appendix p. 12-13) On that date the Petitioner allegedly "declared" that she was a citizen of Washington D.C. (Petitioner's Appendix p. 12). The Petitioner made this declaration while residing in Florida. (Petitioner's Appendix p. 12). Based primarily on this "declaration", the Petitioner contends that she was a citizen of

Washington D.C. when this action was commenced on May 1, 1992. (Petitioner's Appendix p. 6, 12-13). In order for subject matter jurisdiction to conferred by the District Court under 28 U.S.C. §1332(a)(1), complete diversity of citizenship between the Plaintiff and the Defendants must exist when the action was filed. *Smith v. Sperling*, 77 S.Ct. 1112, 1114, 354 U.S. 91, 93 (1957). Thus, the only inquiry is whether her declaration, made on December 4, 1987 while she was physically present in Florida, effected a change in her domicile. The answer to that question is clearly in the negative.

A change in domicile requires the confluence of physical presence at the new location with an intention to remain their indefinitely. *Scoggins v. Pollock*, 727 F.2d 1025, 1026 (11th Cir. 1984). Ms. Broida met neither requirement. Ms. Broida has stated that she was physically present in Florida, except for brief occasional visits to Washington, since 1977 and through the commencement of this proceeding. (Petitioner's Appendix p. 11-13). When Ms. Broida "declared" her domicile to be Washington, D.C. on December 4, 1987 she was not present in Washington D.C. with the intention to remain their indefinitely. Therefore, Ms. Broida did not effectively change her domicile. The order

of the district court is not clearly erroneous and was properly affirmed by the Eleventh Circuit.

II. A WRIT OF CERTIORARI SHOULD NOT BE GRANTED WHEN THE PURPORTED ERROR BELOW CONSISTS OF AN ALLEGEDLY ERRONEOUS FACTUAL FINDING.

According to the rules of the Supreme Court, a petition for a writ of certiorari is rarely granted when the asserted error consists of an allegedly erroneous factual finding by a lower court. Sup. Ct. R. 10 (1995). The determination at issue in this appeal is whether the Petitioner was domiciled in Florida or Washington D.C. when she filed the action in the United States District Court for the Southern District of Florida on May 1, 1992. A determination pertaining to domicile is essentially factual in nature. *Lew v. Moss*, 797 F2d 747, 750 (9th Cir. 1986). A District Court's factual findings on jurisdictional issues must be accepted unless clearly erroneous. *Reebok Intern. Ltd. v. McLaughlin*, 49 F.3d 1387, 1390 (9th Cir. 1995). While the Petitioner no doubt disagrees with the factual determination made below, review of such a determination on certiorari is inappropriate.

III. A WRIT OF CERTIORARI SHOULD NOT BE GRANTED WHEN THE ASSERTED ERROR BELOW CONSISTS OF THE PURPORTED MISAPPLICATION OF A PROPERLY STATED RULE OF LAW.

According to the Rules of the Supreme Court, a petition for a writ of certiorari is rarely granted when the asserted error consists of the purported misapplication of a properly stated rule of law. Sup. Ct. R. 10 (1995). The rule of law at issue in this appeal is clear: the District Courts of the United States lack subject matter jurisdiction over a dispute where there is not complete diversity of citizenship between the Plaintiffs and the Defendants. 28 U.S.C. § 1332(a)(1); *Owen Equipment & Erection Co. v. Kroger,* 98 S.Ct. 2396, 2403, 437 U.S. 365, 373, 57 L.Ed.2d 274 (1978). The District Court properly stated this rule of law in its order ratifying the determination of the Magistrate. (Petitioner's Appendix p. 9). The Eleventh Circuit properly stated this rule of law in its opinion affirming the ruling of the District Court. (Petitioner's Appendix p. 2). While the Petitioner believes that this rule of law has been improperly applied to her, she does not dispute that complete diversity of citizenship is a prerequisite to the proper exercise of subject matter jurisdiction by

the District Court. (Petition p. 8) Under such circumstances, review on certiorari is inappropriate.

IV. THE WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE QUESTIONS PRESENTED FOR REVIEW ARE VERBOSE, INCOHERENT, ARGUMENTATIVE AND REPETITIVE.

Even a cursory review of the questions presented in the Petition demonstrate that they are plainly violative of the Supreme Court rule which requires that such questions be expressed concisely, and that they not be argumentative or repetitive. Sup. Ct. R. 14.1(a) (1995). The questions presented in the petition are not tailored in a manner amenable to reasoned and coherent discourse, and determining what issues are raised by these questions, much less formulating an appropriate response to the questions, is nearly impossible. Having violated Supreme Court Rule 14.1(a), review on certiorari should be denied.

V. THE WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE IT FAILS TO PRESENT WITH ACCURACY, BREVITY, AND CLARITY MATTERS ESSENTIAL TO READY AND ADEQUATE UNDERSTANDING OF THE POINTS REQUIRING CONSIDERATION.

The instant Petition is a long and tedious diatribe which fails to properly focus on the real issue at hand - whether there was complete

diverisity of citizenship when the current action was filed. Instead of focusing on the District Court's subject matter jurisdiction, the Petition attempts to have this Court re-address issues which have already been decided by state circuit courts, state appellate courts, Florida's Supreme Court, the United States Supreme Court, the United States District Court, and the United States Court of Appeals over the course of the sixteen years of litigation pursued by the Petitioner. The opinion of the Eleventh Circuit Court of Appeals addresses the lack of subject matter jurisdiction, and no other issue. The Rules of the Supreme Court require that a petition for a writ of certiorari present with accuracy, brevity and clarity whatever is essential to ready and adequate understanding of the points requiring consideration. Sup. Ct. R. 14.4 (1995). Instead of focusing on the essential issues, the Petitioner has raised, in an incoherent and conclusory fashion, numerous points which neither merit nor require this Court's consideration.

Additionally, the Petitioner's unreasonable attitude toward the judicial process is well documented. The pursuit of frivolous claims and personal attacks on lawyers and judges caused her to be suspended from

the practice of law by the Supreme Court of Florida in 1991. *The Florida Bar v. Broida*, 574 So.2d 83 (Fla. 1991).

CONCLUSION

For all of the reasons mentioned above, the Respondent, Samuel S. Smith, repectfully requests that this Court deny the Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

Samuel S. Smith, Esq.
Counsel of Record

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By:

Supreme Court, U.S.
FILED
JAN 22 1996
CLERK

No. 95-914

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1995

EDITH HOROWITZ BROIDA,

Petitioner,

v.

ESTATE OF MAURICE HOROWITZ, Deceased, Through Its Personal Representative, Samuel S. Smith, et al,

Respondents,

On Petition for Writ of Certiorai to the United States Eleventh Circuit Court of Appeals

PETITIONER'S REPLY BRIEF AND APPENDIX

EDITH BROIDA
Pro Se
P. O. Box 5941
Washington, D. C.
20016
(301) 681-2050

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Respondent Samuel S. Smith is referred to by full name, Smith, respondent, defendant Petitioner is referred to as Petitioner, Plaintiff, or Broida.

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District Court of Appeal of
Florida, 3rd,, Oct. 26, 1982
420 So.2d 936.

THE RULING OF THE DISTRICT COURT DISMISSING PETITIONER'S CAUSE DUE TO LACK OF DIVERSITY OF CITIZENSHIP BETWEEN PLAINTIFF AND DEFENDANTS WAS CLEARLY ERRONEOUS REJECTING EVIDENTIARY PROOF OF ESTABLISHED DOMICILE OF PLAINTIFF

Respondent Smith's arguments highlight why this Court should grant the Petition.

The ruling of the District Court and affirmance by the appeal Court of the rejection by the Magistrate of the incontrovertible written evidence filed by Plaintiff proving a physical residence in Washington, D. C. continuously without one day's discontinuance since 1963 and continuing to the present, coupled with her declaration of it as her legal domicile as opposed to her temporary residence in Florida necessitated for the purpose of protecting her inheritance property rights, and working as personal representative and attorney in two estates of her deceased parents to protect her legal rights of her interest in those estates and the interest of her brother and other family members rights as delineated by heirship settlement contracts held inviolate by Florida probate law WAS CLEARLY ERRONEOUS. See RApp,p 1 Affidavit of Edith and Alvin, p 2 Affidavit of Paula Horowitz Roth.

This Court agreed to review the facts in the case of the forefeiture by the state, upheld by the State Supreme Court, of the personal property owned by Tina Bennis, just as it should herein.

The Magistrate's Recommendation is a hodge-podge of misstatements of the written evidence going into great detail

about plaintiff's membership in private organizations in Washington and Miami,and naming organizations from a brochure plaintiff had used in a political campaign against the probate judge whose term ended in 1986 and was the one who invalidly interfering in the Maurice Estate made the appointments invalidly of Smith and Kelner when the estate probate was assigned to him five years after it had begun, was completely settled, and plaintiff had litigated removing six invalid claimants, increased the value of the property under eminent domain proceedings,from $100,000 offered by the condemnor to $300,000 jury verdict. The 1981 jury verdict was appealed by Plaintiff for the errors of the trial judge, and the appeal court entered its reversal in 1982. See RApp, p 7 ,or 420 So2d 936, Estate Maurice Horowitz, Broida and Alvin Horowitz, Personal Representatives v. City of Miami Beach. The reversal remanded the case for new trial and the expert appraiser's valuation of betweeen $648,000 and $1,000,000, worried the condemnor..

The invalid appointments and negotiation of Smith to take over the new trial caused Broida and Alvin to settle, to keep the marauding judge and lawyers from taking total control of that case as well which Broida had litigated for five years for her parents and six for the estate. She had argued the appeal herself but now had no desire to keep working for the benefit of the marauding new lawyers. They settled for another $100,000 above the jury verdict.

Since that probate judge came up for reelection and Broida had legal domicile as declared by her in Miami Beach she would not permit him to go un-

challenged. The judge was beloved by lawyers for awarding big fees from the money in estates over which he presided. Plaintiff financed the campaign with her own money and included in her brochure, as is usual,organizations to which she belonged in her life- beginning in 1943 plus her educational history and accomplishments: American Jewish Congress,1947 but no longer; The Florida Association of Women Lawyers, not since the 50's; on various visits to Miami, after moving to Washington she made appearances at various organization hearings and delivered her opinions, and was made a member, in the 70's.

Plaintiff has been an activist since becoming an adult, and did the same on moving to Washington, and would be so involved anyplace she would be living.

A year after the campaign, in which she received about 48,000 votes, and invested $12,500 as opposed to the 14 year incumbent expenditure of $126,000 she changed her domicile from Miami to her existing physical domicile in Washington, D. C., in 1987.

If a person joins an organization based in California while domiciled in New York does that change his domicile to California?

The Magistrate complains that Plaintiff refused to give her address in either Miami or Washington, uses a Post Office Box in Miami, uses an answering telephone service in Miami. When Plaintiff filed a motion that she would give her Washington address to the Magistrate under confidential seal because the defendants are her enemies and she does not want them to have it, asking for court protection, he denied the motion. It is the Court that needs to be convinced, and Court's have the discretion to provide protection to litigants and witnesses when the information could endanger them. See RApp, p 7 Plaintiff's Motion.

With the information that Plaintiff moved to Washington in 1963 and has maintained a residence there continuously but holding the home of her parents as her domicile although she no longer lived there., with the information that she was employed in Washington for federal agencies, filed her income tax returns in the Philadelphia office which covers Washington, and that she only returned on visits to Miami on an as-needed basis by her parents, the magistrate had no difficulty in finding that she had a legal domicile in Miami where she did not have a permanent residence. See RApp, Plaintiff's Letter to Internal Revenue Service, Philadelphia, Pa, on refund on 1984 Tax Return filed with them., dated 1988., p **6** .

He refused to recognize that she filed title to her car purchased in Miami with District of Columbia, but then had to register it in Florida with Florida tags to avoid double taxation and Florida transient taxes of $400and that the car is insured as from her main residence in Washington by the Virginia office of the national insurance company. See Letter to D. C. Dept. Transportation seeking copy of title, dated 1987, RApp, p **5** .

The Magistrate also could not understand why she disconnected her telephone service in Washington and payment for it, which she did because she was not there to use it, and not until after many years had passed keeping her in Miami for the litigation. She could afford to save some money when she had to maintain two residences because of the estate litigation.

The litigation against the attorney who prepared the invalid will ended,plaintiff had only the eminent domain suit to finalize until the probate judge's interference deciding to take control of the estate caused all

litigation to begin again to remove the invalid appointments and retake the estate.

Smith warned Plaintiff that if she tried to remove him the more it would cost the estate. It was impossible to stop him, because after Smith attached himself to the probate court, although spending most of his time attending Bar conferences around the world, developing a relationship with judges,he was so well known to them that the invalid actions could not be reversed.

While Plaintiff had successfully revered the eminent domain verdict on appeal before Smith entered the estate, from then on she could not win, which the probate judge, who appointed him continuously planned, and succeeded.

When the issue of domicile is raised it becomes evidentiary. Therefore Smith's objection to the pleadings presenting written evidence to the Court as she was able to locate it, and having to return to Washington to her home there to obtain some of it is objectionable. Smith, although formerly personal representative of the Estate did not attend the two hearings held by the magistrate. He was probably off to a Bar convention. After his petition came up for fees before the probate judge, he left the final hearings to go off to a Bar convention, and was not present, and of course never did anything to carry out his fiduciary duties to protect the assets of the estate. He would not object to the invalid $25,000 fees to attorney Rosen or the $10,000 to attorney guardian Milton Kelner, who after all were there supporting him and the probate judge.

Smith complains also of all the history presented by Petitioner to this Court.

This presentation of the facts as to Plaintiff's domiciliary life, her relationships with her parents and other members of the family, her reasons for moving to Washington, the necessity for her to return from the new home she chose in 1963 to serve the needs of her parents living in her former domicile, the reasons for claiming their home as her domicile to be able to return to serve them, the necessity for her prolonged stay in her former domicile due to the estate litigation, and her final withdrawal from the former domicile by withdrawing her voting rights and making a public declaration to the defendants that her residential location in Washington is her domicile from December 1987, and why there is even such necessity for a lawsuit in federal court- are all necessary to prove her domicile in Washington.**RApp,p**12,13,14

Or perhaps he and the Magistrate expect that she should have left Florida and returned to Washington to stand in front of her residence and shout " This is now my legal domicile", or advertise the statement in the newspapers or on television. But then they wouldn't know about it!

Smith uses his Reply to defame Plaintiff's reputation by citing her suspension by The Florida Bar. He states that she should not have been involved in protecting her legal rights by taking appeals and disqualifying obviously prejudiced judges. He does not advise the Court that the charges were brought by a lawyer representing him in a suit filed by Petitioner against him and his brother for their interference in the Estate.

These charges were spurious regarding whether Broida had an ex parte discussion with a judge on the return of the case against Smith to Dade County court where a presiding

judge had granted her motion to transfer it to a different county. The judge before whom it came, claiming he knows Smith very well transferred it back, but his action was appealed by Broida.

The charges against her were ridiculous and came before a committee of young lawyers who were friends of the young lawyer representing Smith. Grievance officers of the Florida Bar are recent law school graduates with no experience as lawyers hired by the executive director. This grievance officer approached Petitioner to settle before the case went to a Judge, but Petitioner refused to even discuss it with him because the charges were so ridiculous.

The suspension ended a year later, but Petitioner will never rejoin the Florida Bar although she continued to pay dues all the years she has been living in Washington while not in Florida using her license to practice law, and would like the dues returned.

The Judge hearing the charges was about to retire and go live in Colorado. He had an attention span of two minutes. He was known as one of the worst judges in Broward County always finding a defendant guilty since he sat on criminal cases.

Not only did Smith want to take her money and her work he also wanted to destroy her sterling reputation of a lifetime, which is:

Broida was presented with seven honor scrolls at elementary school graduation ceremony on stage: she skipped three times and was captain of her gym class from age 9 through high school; her senior year in high school was in Miami Beach and she made all A's graduating with honors; and majoring in the field of education and sociology in college graduating with honors; began work in her parent's retail business at age 16, as bookkeeper and all other positions

after college she worked in her parent's business; in the 40's, then married, she formed a women's auxiliary for the Men's Junior Chamber of Commerce, became active in local, state, and national political campaigns seeking the best candidate; raised funds for both Jewish and Christian charitable organizations as well as the March of Dimes; and other medical needs;

began efforts against ethnic and racial discrimination, first, to remove the anti-semitic signs on apartment and hotel dwellings in Miami Beach, and for civil rights of black minorities working with the Urban League; joined the American Jewish Congress in 1947 and elected as Vice-President after four months of coordinating fund raising events; had to give up daytime organization activities entering law school at night and working in the day, as assistant administrator for Temple Emanuel day school; later as advertising director of a promotional magazine, and other jobs as they suited her time as a law student and mother rearing a child.

was chosen by KBP sorority as having the highest average of women students in the law school and awarded a book scholarship and plaque at a luncheon with presentation by the Dean; invited to join the Law Review, and was elected Case-Note Editor by the other members; was an editor on the Law magazine and the Yearbook, and authored an article published in Miami Law Review, 1955, on Municipal Corporations Law.

graduated fifth in a class of 103, cum laude. Opened an office for the practice of law, engaged in litigation and won at least 95% of her cases until moving to Washington. See RApp, p 8 Letter from Floyd A.Wright, law school professor on her application for a scholarhsip to study International Law.

After law school Petitioner continued to be engaged in civil rights activities working with the ACLU, and also for the Girls Scouts of America as public relations director; directed 3 Bar conventions.

In Washington Petitioner deliberately worked as a youth specialist,first, coordinating the first federal 'Upward Bound' program for the D. C. Model School Division recruiting disadvantaged students from the four D. C. High Schools; then for the Department of Labor's 'Cause' program-recruiting college graduates to be trained for all state employment offices as one-stop youth counselors; was on the first Job Corps committee; a program manpower specialist for grants to organizations giving basic education and employment training to school dropouts, and also retraining displaced older workers, and directing selection of college graduate applicants for the first National Teacher Corpsfor the Office of Education. RApp,p10

Samuel Smith lacks legal ethics and integrity. Plaintiff was referred to him for the litigation against the Shapiro invalid will. She conferred with him to represent her and her brother and the family against the Will. He offered to settle it which Broida and Alvin would not accept at that time. They didn't retain him. Having fully discussed the case with him, when he was appointed five years later into the case as an antagonist (he was in Germany) and confronting him as he went into see the Judge on his return reminding him that by Florida legal ethics he could not come in as an antagonist now. He went in for an ex parte discussion about it with the judge and accepted. From that day forward he has reviled, ridiculed and demeaned Broida treating her as though she owes him a living while taking her work, her life, and her money.

Smith was brought into his older attorney brother Harry Smith's firm, Smith & Mandler.

Broida learned of a merger of Harry Smith with the Ruden firm, raising it at a hearing. The small estate with initial assets of $5400 and an interest in real estate for which $100,000 had been offered was too small for a large firm like Ruden. From the transcript this is the response of Sam Smith.

"For whatever relevance there is to this hearing, so the record is straight, my firm has not merged with the Ruden firm, notwithstanding Mrs. Broida's belief of what she reads in the newspapers. Although she has sued them for merging with us, we have not.

Mrs. Broida: Your Honor, may I ask for a very definite statement that they are not going to merge, because - - -

Mr. Smith: We might well merge,and if my grandmother had wheels, Mrs. Broida, she'd be a wagon."

This was typical Smith throughout all proceedings-the man appointed as a fiduciary to protect estate assets. Harry Smith in a few weeks join Ruden as a partner bringing brother Sam with him. Harry specializes in real estate.

The District Judge Having Two Cases With The Same Diversity Issue Set One For Trial Twice While This Awaited The Magistrate's Report When He Should Have Heard The Issue Himself And Erroneously Did Not Review The Report De Novo And Hold Hearing Making It Evident He Was Totally Unfamiliar With Both Cases

The district judge must be reversed since he accepted the Report not knowing what either case entailed, and the appeal court as well.

CONCLUSION

For the reasons given in the Petition and Reply the Petition should be granted.

Respectfully submitted,

Edith Broida, Pro Se
P. O. Box 5941
Tel:301-681-2050 Washington, D. C. 20016

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

PROBATE DIVISION
Case No. 78-1553
Division 02 (Judge Blanton)

Filed June 21, 1979
Clerk, Dade County
Probate Division

In re: ESTATE OF
MAURICE HOROWITZ,
Deceased.

AFFIDAVIT

State of Florida)
County of Dade) SS:

BEFORE ME, the undersigned authority, a duly authorized Notary Public of the State of Florida, personally appeared affiants, who being duly sworn upon oath, make this Affidavit; they depose and state:

That they are Edith Horowitz Broida and Alvin Edward Horowitz respectively and are the only two children of decedent Maurice Horowitz (Moe) and his spouse Anne Gottlieb Horowitz deceased seven months prior to decedent herein, and they are both respondent-petitioners in the within cause.

That Edith Horowitz Broida is the older of the two children and has a long-term relationship with decedent herein and his spouse as their attorney, tax preparer, companion, and is attorney for the estate of his spouse also before this Court, and that she is the person most familiar with all the circumstances of both estates of both decedents giving her special knowledge of this cause.

That by agreement she represents all the respondent-petitioners being herself, the other adult child, and his four children who are grandchildren

of decedent and his spouse, as attorney in this case.

Said affiants for themselves and the other four respondent-petitioners claim that her represntation and her testimony are essential to their cause and they would suffer a substntial hardship were she to be precluded from serving as attorney and testifying as a party if and when necessary.

FURTHER Affiants Saith Not.

s/s Edith Horowitz Broida
EDITH HOROWITZ BROIDA

s/s Alvin Edward Horowitz
ALVIN EDWARD HOROWITZ

I hereby certify that on this day, the affiants above described executed the foregoing instrument before me, and acknowledged that they executed the same freely and voluntarily for the purpose therein stated. Witness my hand and official seal at Miami, Dade County, Florida , this 21st day of June, 1979.

s/s Belinda Erst
Notary Public, State of Florida

My Commission Expires Oct 10, 1987

IN RE: ESTATE OF Maurice HOROWITZ, DECEASED.	IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA PROBATE DIVISION CASE NO. 78-1553 Div. 04 Newbold

AFFIDAVIT

State of Florida)
County of Dade) SS:

Filed
8/26/83
Clerk
Probate Div.

There is no necessity for this Affidavit, however, in order to resolve any question, I, Paula Horowitz Roth, daughter and second issue of Alvin Edward Horowitz, thirty-six years of age, employed as an executive office manager, a resident of Dade

County, Florida, do hereby:

Reaffirm that Agreement dated April 3, 1978 and which is filed in this cause, into which I entered and consider binding upon me, my brother Stephen Ronald Horowitz, my sisters Karen H. Barnett, Betsy Jo Horowitz and my father Alvin Edward Horowitz, and my aunt Edith Horowitz Broida by which Agreement I am my brother and sisters assigned all our right, title and interest in the Estate of our grandfather Maurice Horowitz, equally to our father Alvin Edward Horowitz and Aunt Edith Horowitz Broida who are brother and sister and the only two children of our grandparents, in accordance with the terms of that Agreement, and further

I reaffirm the Waiver and Consent of 1978 and all other instruments which I signed on their behalf in this Estate.

Having sworn to this Affidavit before the undersigned authority, further I saith not.

Witnesseth:
s/s Jacqueline Uganiya
Address:
Faith C. Madison
Address

s/s Paula Horowitz Roth
Paula Horowitz Roth
7803 N.W. 22 Street
Miami, Fla.

On August 12, 1983 before me, the undersigned, a Notary Public in and for the State of Florida personally appeared before me Paula Horowitz Roth known to me to be the person whose name is subscribed to the within instrument and executed same before me. Witness my hand and official seal, this day.

S/s(Illegible)

My Commission Expires

EDITH HOROWITZ BROIDA, AND AS EDITH BROIDA,
Plaintiff,
vs.
Estate of Maurice Horowitz through Samuel S. Smith as personal representative, and other defendants.
Defendants.

United States District Court Southern District of Florida

Case no. 92-997 Atkins

PLAINTIFF's MOTION FOR COURT TO PERMIT PLAINTIFF TO FILE WITH THE COURT EVIDENCE OF HER PHYSICAL ADDRESS IN WASHINGTON, D. C. UNDER CONFIDENTIAL SEAL FOR THE COURT'S INFORMATION ALONE IN SUPPORT OF DIVERSITY EVIDENCE

Plaintiff Edith Horowitz Broida makes this Motion that she be permitted to file with the Court under confidential seal her permanent address in Washington, D. C. and the length of time she has lived at that address and paid the cost of living at that address maintaining it for her return to Washingtion after the conclusion of the litigation which has kept her in Miami since 1977.

At hearing on April 6th, yesterday Plaintiff explained to the Court that she has not divulged the address because all the defendants are not just adversaries, but'enemies' of hers and she needs to protect her safety.

The insurance company that has been insuring her residence in Washington D. C. since 1976 has presented a statement to that effect. Their office is in adjacent Northern Virginia. They have also stated that they insure her car (since her major residence is in Washington, D. C. Plaintiff has also filed with the Court the information that she registers her car in Florida since she uses it mainly in Florida, due to the necessity for her to be here because Florida charges $395 for all out-of-state cars used in Florida every year, and when in

1978 plaintiff bought a car in Florida and paid sales tax, upon registering it in Washington she had to again pay an excise tax for having brought it into Washington. She then registered her car in Florida when that State passed the law requiring payment of $100 fee for cars with out-of-state licenses used in Florida, now increased.

Wherefore, if the issue concerning this Court is the physical address of the home of plaintiff as evidence of her domicile in Washington, D. C. plaintiff will provide that information solely to Magistrate Bandstra as confidential sealed evidence not to be viewed by any of his staff or anyone else.
Attachment: Miami Herald article on new law increasing fee on out-of-state cars.

s/s Edith Broida

May 27, 1987

P. O. Box 390751
Miami Beach, Fla.

D. C. Department of Transportation
Bureau of Motor Vehicles Services
East Administration Building
301 C Street N. W.
Washington, D. C. 20001

Dear Department:
I have registered the title of my car in Florida because they require it when a car is driven there.

I have not changed my title from District of Columbia.

If they have stupidly sent you my title that you just sent me do not cancel my registration of title in District of Columbia.

If I change anything I will remove it from Florida, if there is a problem.

I'd like you to send me a Title that shows when that car was titled in D. C. and it was in 1978 around August or September. The title you sent has a new date. Send me a duplicate of the original. Thank you.

Edith E. Broida

Department of the Treasury
Internal Revenue Service
Philadelphia, Pa. 19255

In reply refer to:
28600646
Oct. 24, 1988
LTR 206C

EDITH H. BROIDA
P. O. BOX 390751
MIAMI Beach, Fl 33119

Form Number 1040
Tax Period:
Dec. 31, 1984

Dear Edith H. Broida:
Thank you for your inquiry of June 10, 1988 about your refund check. We share your concern and hope the matter will be cleared up soon. The check is being traced. We apologize for the delay. If check has not been cashed or destroyed, you will receive your refund within 90 days from the date of this letter. However if an unauthorized person has cashed the check, a time-consuming investigation may be necessary before a new one can be issued.

Petitioner's Note: Letter from Internal Revenue Service office which handles tax returns for District of Columbia where petitioner filed tax returns.

Excerpts from 420 Southern Reporter, 2d, p 936, Fla, appeal of jury verdict in eminent domain trial on residence of decedent Maurice Horowitz. Appeal taken by Petitioner Broida.

ESTATE OF MAURICE (MOE) HOROWITZ, et al, or Edith H. Broida and Alvin Edward Horowitz as Personal Representatives of Estate of Maurice (Moe) Horowitz, Deceased, Appellants.

v.

CITY OF MIAMI BEACH, A FLorida Municipal corporation, Appellee.

No. 81-1919

District Court of Appeal of Florida, Third District

Oct. 26, 1982

Edith Broida, Miami Beach, in pro per
Norman Malinski and Steven D. Ginsburg, Miami, for appellee.

Before BARKDULL, SCHWARTZ, and JORGENSON, JJ.

PER CURIAM.

In this condemnation case, the property owners contend it was error for the trial court to disqualify their primary real estate appraiser's expert testimony. We agree and reverse.

Florida's constitutional guaranty of full and just compensation in eminent domain actions requires that courts take into account all facts and circumstances which bear reasonable relationship to loss occasioned owner by virtue of his property being taken

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UNIVERSITY OF MIAMI
P. O. Box 8087
Coral Gables, Florida
School of Law February 1, 1958

Dear Edith:

I consider it an honor to write a letter of recommendation in your behalf. I am proud of you as one of our former graduates.

Congratulations and Good Luck!

Cordially,

s/s FAW
Floyd A. Wright
Professor of Corporations Law, and

was Author of the Corporate Code of the State of Oklahoma.

UNIVERSITY OF MIAMI
P. O. Box 8087
Coral Gables, Florida
School of Law February 1,1958

Dr. J. Riis Owre
Dean of the Graduate School
University of Miami
Coral Gables, Florida

Re: Edith E. Broida

Dear Dean Owre:

Edith Broida has advised me that she is making an application for enrollment in the Graduate School of the University to pursue studies leading to a Master's Degree in Law, and this letter is written in her behalf.

I am attaching a list of her educational accomplishments while studying here at the University, and the Latin expression "Res Ipsa Loqutuer" (the thing speaks for itself) seems to be apropros in explaining her qualities. I'm also inclosing a page from the

June 1954, Lawyer of the School of Law magazine.

Edith took two advanced courses from me (Corporations and Corporate Procedure) and in those courses did superb work. She always impressed me as being a brilliantly intellectual, industrious scholar in every sense of the words. Her professional attitude always evidenced a pronounced quality of an analytical, legal mind, so essential in successfully handling intricate problems in law.

Reports which have reached me while she has been engaged in practice during the last four years since her admission to the Florida Bar have been very gratifying. I feel that Edith could qualify for graduate law study in the leading schools of the land. I recommend her as being well qualified in scholastic and every other ability to pursue work on an LL.M. in the Graduate School of the University of Miami.

Sincerely yours,
s/s Floyd A. Wright
Professor of Law

Petitioner's Note. The scholarship requested for graduate study was granted.

CONGRESS OF THE UNITED STATES
House of Representatives
Washington, D. C.
August 3, 1965
(Recd Aug 5,1965)

Mr. Francis Gregory
Assistant Director for Manpower
Department of Labor
1730 M Street, N. W.
Washington, D. C.

Dear Mr. Gregory:

I understand from Paul Cronin in Lowell that the meeting between shoe manufacturers in the Lowell and Lawrence areas and representatives of the Labor Department went extremely well last week.

We are grateful to you for sending Mrs. Edith Broida-- she was an outstanding participant and a credit to the Labor Department.

With every good wish, I am
s/s F. Bradford Morse
Member of Congress

Pet's Note:
Rep. Morse became an Ambassador to the United Nations.

STATE OF VERMONT
Department Of Administration
Montpelier
August 2, 1965

Mrs. Edith Broida, Manpower Administration specialist
United States Department of Labor
Office of Manpower, Automation and Training
1730 M Street, N. W. Room 400
Washington, D. C.

Dear Mrs. Broida:

It was a distinct pleasure to have had an opportunity to meet you last

week and discuss Vermont's application for a project on the state's aging population.

Your grasp of the problem in its broader aspects, as well as your competence as a federal official, were refreshing and encouraging.

The population pattern in Vermont, coupled with a restrictive tax base, comprises a difficult situation in providing all the assistance needed to the older and aging citizens of the state, not only assistance financially but in terms of devoting adequate time and efforts to their special employment and related problems.

All of us who participated in last week's discussion were pleased to find you sympathetic to the problem in all its various aspects and pleased you are handling the project application.

We look forward to your next trip to Vermont.

Sincerely,

s/s William F. Kearns, Jr

William F. Kearns, Jr.
Commissioner

WFK/a

August Weintraub & Co.
Certified Public Accountant
April 10, 1967
Edith Broida
824 New Hampshire Avenue, N. W.
Washington, D. C.
Dear Edith:
Enclosed is a copy of the U. S. Individual Income Tax Return for your parents for 1966. Your father has suggested that we send this to you for review. This return must be filed by April 17, 1967, so please advise us before that date if it meets your approval.

Very truly yours,
s/s Leslie J. August
Certified Public Accountant

April 1, 1967

Mr. Morris Schneider
171 Lincoln Road
Miami Beach, Florida
Dear Mr. Schneider:

My parents have informed me that you called regarding a prospective buyer. Would you please send me the information regarding this.I'm afraid we cannot give you any further financial information than you now have and if the buyer is interested in this business from the truthful information which had already been provided you and from your own knowledge of the long and excellent reputation of this business on Lincoln Road then the next step is for him to come to Miami Beach and speak with the owners and their representatives. We could provide a very nice financial statement to lure them but that would not make the sale after all, would it. What they were buying is a long established and nationally known name and reputation, a location, and a good rental.

May I hear from you by return mail as to the nature of the inquiry and what action you have taken.?

Very truly yours,
s/s Edith Broida

Mrs. Edith Broida
825 New Hampshire Avenue, N. W.
Washington, D. C.

Postmark - May 16, 1973 (Excerpts) Miami

Ann G. Horowitz
1931 Meridian Avenue
Miami Beach, Florida 33139

Tuesday, May 15, 1973

Dear Edith

Hope you are well. Received the change purse. I like it and also the beautiful card you sent. I may frame it.

I gave Alvin the shares.

I said to him I hope I'm not making a mistake, and I still say it. I wanted to give it to him, and as you always said give it now, if you can so that's what I did it was in his name and my name. When I bought it he was very young. But he's all for Marsha and his children. I still don't know if he feels for us,You, Dad, his mother, and Stacie.

I also gave him the balance of Valueline.

Love,
Mother

Envelope addressed: Mrs. Edith E. Broida
Washington, D. C.

WASHINGTON, D. C.
202-333-1356
August 22, 1972

Ms. Evelyn Lester
Patient Account Counselor
Mount Sinai Hospital
4300 Alton Road
Miami Beach, Florida 33140

Re: Maurice Horowitz
admission 317164

Dear Mrs. Lester:
Thank you for your letter of July 21st in reply to mine of July 3rd. You have sent a corrected bill with adjustments to the original. It appears now that the total hospital bill aside from separate fees of anaesthetist, radiologist, surgeon, physician, private nursing is $1706.90. To the original bill of $1662.40 an addition has been made of an unitemized $44.50.

Your charges are really shocking. Have you heard that hospitals are decreasing charges due to the outcry against them?

You have received payment from Medicare and Blue Cross of $1253.50 and from the patient of $355.50. He has also paid separately for the six shifts of private nursing.

Three years ago this patient, admitted to your hospital for the surgery performed this time, was placed in a semi-private room with a dying man. Because of the excitement surrounding this man day and night the patient suffered a heart attack, his first in his then 75 years. Instead of receiving the minor prostate correction he was scheduled for he was placed in intensive care for several days and then released. He suffered unnecessarily and the hospital profited from this useless stay.

This patient also develops lung congestion from too cold air-conditioning. For this reason when the prostate correction was scheduled again it was determined he would need a private room in order to survive the operation and the hospitalization.

The patient had a reservation at the hospital for three weeks prior to admittance:

1. Why was he admitted on Wednesday 3/15 at 1:00 P.M. to then wait until 8:00 the next morning before anything was done for him expending $80 for the privilege of walking the halls?

(Paragraphs 2 on group nursing charges, 3, and 4 on same, 5 on medication charges are deleted to eliminate length of this letter.)

Please supply me with the following:

1. Itemized list of special medical supplies - $45.00
2. Justification for charges of $96 for drugs given aside from intravenous and inhalation therapy.
3. Itemization of additional $44.50 added to original bill.
4. Charge of $49.50 for group care on 3/16 when patient was in testing and ambulatory all day.
5. Charge of $80 for admission one day before needed.

If there is justification then the patient will pay what is justified in addition to the $1608.50 you have already received for what is generally considered confinement for minor surgery.

Very truly yours,
s/s Edith Broida - Washington, D.C.